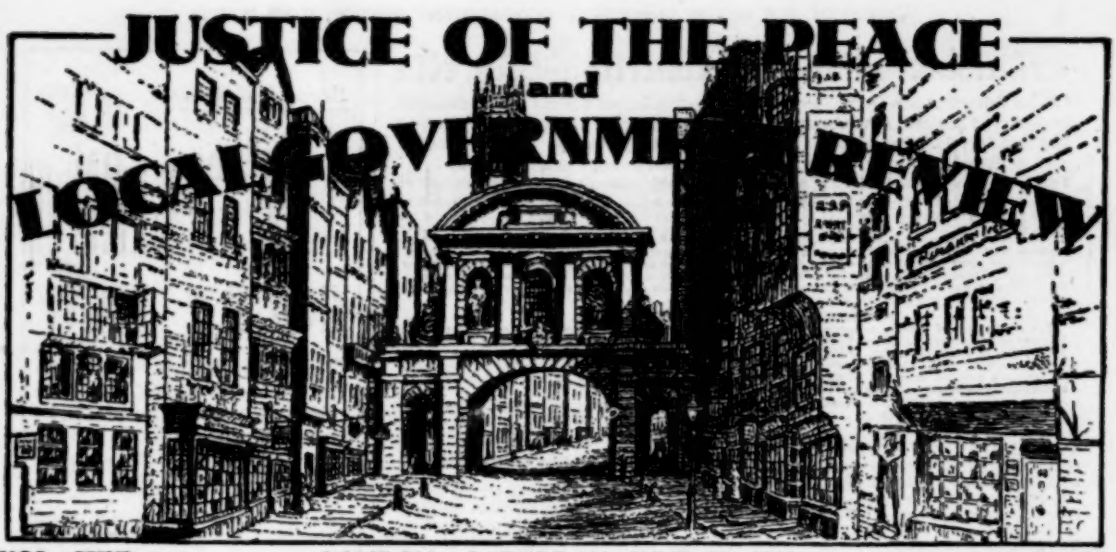

VOL. CXVI LONDON: SATURDAY, JUNE 28, 1952 No. 26

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REPORTS

Official & Classified Advertisements, etc.

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, Police Officers and Social Workers are excepted from the provisions of the Order, as is employment in a managerial, professional, administrative or executive capacity.

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BOROUGH OF HIGH WYCOMBE

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of a Legal Assistant in my department at a salary in accordance with Grade A.P.T. IV (£530-£575). Applicants should have experience in conveyancing and general legal work, and Local Government experience is desirable but not essential. Applications, giving particulars of age, qualifications and experience, and the names and addresses of two referees, should reach me by not later than July 1, 1952. Housing accommodation will be provided if required.

P. B. BEECROFT,
Town Clerk.

Municipal Offices,
High Wycombe,
June 11, 1952.

BOROUGH OF LUTON

Appointment of Second Assistant to the Clerk to the Justices

APPLICATIONS are invited for the above appointment; salary £570—£620. Pension scheme and N.J.C. conditions apply. Candidates must have a sound knowledge of, and extensive experience in, the duties of a Magistrates' Clerk's office, and be competent to take courts frequently.

Applications, in candidate's own handwriting, giving age, particulars of present duties and previous experience, together with copies of two recent testimonials, should reach me not later than July 9, 1952. Canvassing will disqualify.

WILLIAM H. STAPLEY,
Deputy Clerk to the Justices.

14, Upper George Street,
Luton, Beds.

BOROUGH OF SOUTHGATE

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. Salary according to experience and date of admission within A.P.T. VI/VII (£465—£760 per annum) plus the appropriate "London Weighting" allowance.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms, obtainable from the undersigned, to whom they should be returned with the names of two referees and endorsed "Appointment of Second Assistant Solicitor." Closing day July 16, 1952. Canvassing will disqualify.

GORDON H. TAYLOR.
Town Clerk.

Southgate Town Hall,
Palmers Green,
London, N. 13.

WEST RIDING OF YORKSHIRE

Petty Sessional Division of Lower Strafforth and Tickhill (Doncaster)

Appointment of Magisterial Assistant

APPLICATIONS are invited for the above appointment. Applicants should be shorthand-typists, and have had some experience of the routine of a Justices' Clerk's office, including the issue of process and the keeping of the accounts.

Salary will be according to age and experience, and will be under the General Grade I (maximum £425) or Grade II (£445 × 15—£490).

Applications, giving particulars of age, qualifications and experience, should be accompanied by copies of three recent testimonials.

ERNEST W. PETTIFER,
Clerk to the Justices.

West Riding Court House,
Old Station Road,
Doncaster.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVI. No. 26. LONDON : SATURDAY, JUNE 28, 1952 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

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NOTES of the WEEK

Pleading Guilty By Mistake

The case of *R.* v. *West Kent Quarter Sessions, Ex parte Files* [1951] 2 All E.R. 728, laid it down that there can be no appeal to quarter sessions against conviction by a defendant who has pleaded Guilty before the justices, with the clear intention of so doing. In *R.* v. *Durham Quarter Sessions, Ex parte Virgo* [1952] 1 All E.R. 466, it was made clear that a defendant who pleads Guilty, not really appreciating the nature of the offence, and, before being sentenced, makes a statement showing that he ought to have pleaded Not Guilty, may appeal against conviction.

An unusual situation was revealed at the hearing of an appeal against sentence heard recently by Carmarthenshire Quarter Sessions' Appeals Committee. The appellant had pleaded Guilty before the justices on a charge of using a motor cycle without having in force a policy of insurance, and it was agreed that he had no right of appeal against conviction. The appeal committee was informed, however, that although the police genuinely thought that the appellant's policy did not cover the user by him of a motor cycle, it transpired after the magisterial proceedings that the policy of insurance did in fact cover such user.

Evidently the defendant thought he was guilty, and intended so to plead. That being so, it was agreed that although both the prosecution and the defence later considered there had been a misapprehension about the facts of the case, there could not be an appeal against conviction. The Appeals Committee went as far as it possibly could by substituting for a fine and disqualification an order of absolute discharge. The effect of such an order is to remove the disqualification by reason of s. 12 (2) of the Criminal Justice Act, 1948.

That may be considered sufficient for all practical purposes, but presumably the defendant could, if he so desired, ask the Home Office to recommend the grant of a pardon.

Evidence : Res Gestae

Davies v. *Fortior Ltd.*, noted at [1952] 1 All E.R. 1359, was an action for negligence and breach of statutory duty arising out of a fatal accident to a workman who fell into a bath of acid. The action was settled, but during the hearing Donovan, J., decided an interesting point of evidence.

In order to support a defence that the accident was due to negligence on the part of the deceased, the company sought to give evidence that almost immediately after the accident the deceased said several times : "I shouldn't have done it." Donovan, J., held this to be admissible evidence as part of the *res gestae*.

The average layman would certainly suggest that this is common sense. It is therefore, satisfactory to know that it is also good law. Sometimes, however, it is a matter of great difficulty to decide how far it is proper to admit evidence as *res gestae*. *Phipson on Evidence*, 8th edn., at p. 52 after referring to the difficulty, states : "There is obvious scope for considerable difference of opinion as to what facts together constitute the event or transaction in dispute and also as to what facts accompanying it are necessary to be proved in order that it should be brought before the court in its true light. If the evidential fact in question is in the particular circumstances either an integral part of the event or transaction itself or so connected with it as to be of real value in determining its existence or its true nature, then such fact is admissible as part of the *res gestae* : otherwise not.

In criminal cases, there is often greater reluctance to admit such statements as part of the *res gestae*. A number of cases are cited in 9 *Halsbury*, pp. 452-3.

Evidence of Co-Defendants

The admissibility and weight of the evidence of one defendant given for or against a co-defendant in a criminal case are matters about which there is a certain amount of confusion, and therefore an article in the *Cambridge Law Journal* by Mr. R. N. Gooderson entitled "The Evidence of Co-Prisoners," will be read by many, including practising lawyers, with interest and profit.

Mr. Gooderson shows that the judgments of the courts have not always been consistent, and individual judges have sometimes adopted different attitudes in different cases while there is also some divergence of opinion among writers of text books.

After a close and critical analysis of a number of decisions, Mr. Gooderson summarizes his conclusions thus :

"A co-prisoner has never been a competent prosecution witness, save in four exceptional cases : (i) after a *nolle prosequi* ; (ii) after a plea of Guilty ; (iii) after an acquittal ; (iv) after severance of the trials. Even in the four exceptional cases, it is the practice for the judge to warn the jury against convicting on the uncorroborated evidence of the co-prisoner, if they hold him to be an accomplice. As a defence witness, a prisoner was before the Act of 1898 competent for the defence of a co-prisoner only in the four exceptional cases, but it seems never to have been doubted since the Act that he is competent in all cases. Whether the evidence of the prisoner as a defence witness is evidence against a co-prisoner is a difficult question, but, although there are conflicting authorities, the better view, both in principle and upon authority, seems to be that today a prisoner is a competent defence witness against a co-prisoner in all cases, but the jury should be given the accomplice warning, if they hold him to be an accomplice."

There is much interesting argument, as well as history, in the course of arriving at these conclusions. There has been some

looseness of practice with regard to the question of treating a co-prisoner as an accomplice. Mr. Gooderson deals with this clearly and convincingly. He says: "It is true that every co-prisoner is not an accomplice, for the jury may find him guiltless, and in every case the question whether a prisoner is an accomplice must be left to the jury, but surely if the jury does not believe the statements of co-prisoners who try to throw the blame on one another, and finds them both guilty, the co-prisoners are *ex hypothesi* accomplices and the appellate court ought to satisfy itself that there was corroborative evidence, lest the jury should be thought to have rejected the evidence of such prisoner as untrue for the purpose of proving his innocence and yet accepted it as the sole evidence of guilt of the co-prisoner." The question is examined in some detail, and the relevant authorities are compared and sometimes contrasted.

Justices in petty sessions have to combine the functions of judge and jury, but the same fundamental principles apply to summary trials as to trials on indictment, and this article deserves to be studied by magistrates and clerks, as well as by practitioners in all criminal courts.

Consolidation of Prison Enactments

A memorandum has been laid before Parliament by the Lord Chancellor as to the preparation of a Bill for the purpose of consolidating certain enactments relating to prisons and other institutions for offenders and for making minor alterations in these enactments. It is pointed out that in some instances the need for alteration arises because existing practice is not in accordance with some old enactments. For instance, under s. 10 of the Prison Act, 1865, the justices were required to appoint "to every prison" certain named officers and "such subordinate officers as may be necessary." But when the functions of the justices were transferred to the Secretary of State by s. 5 of the Prison Act, 1877, the duty was imposed on the Prison Commissioners to appoint subordinate officers who were to be for general prison service. As a result of later amendments the governor and other officers specified in s. 14 of the Prison Act, 1898, were required to be appointed to individual prisons and all other officers for general prison service. In fact, however, it has long been the practice for the Secretary of State to appoint prison officers to the rank of governor and to recruit medical officers without there being any understanding that the duties of these officers, who are civil servants, would necessarily be performed at the same institution throughout their service. It is necessary, therefore, to correct these anomolies and some concerning other appointments. Another proposal deals with the appointment of women prison officers and seeks to dispense with the requirement that a matron must be appointed to every mixed prison which, in practice has been superceded by the Prisons Rules, 1949, which assign to a woman Assistant Governor or woman Chief Officer the care and superintendence of all women prisoners.

Report of the Hull Children's Officer

There is much that is encouraging in the report of Mr. H. Norris, Children's Officer for the City and County of Kingston upon Hull, for the year ended November 30 last. Mr. Norris feels that there is much more to be done, but looking back he sees that considerable progress has been made in a short time, and looking forward he is confident that this progress will continue on the right lines. He is grateful to a Children's Committee who are tackling the accommodation problem on a long-term basis and with a definite plan.

That plan includes the establishment of eight "family homes," four of which are to be built on Corporation housing estates, and four to be in acquired premises, each home to accommodate from eight to ten children. Certain receiving homes will be transferred and the premises will be used as hostels for working boys and working girls.

"It is confidently expected that the completion of this plan should provide all the accommodation needed for children in care in this area. It would enable children who are likely to remain in 'long-term' care and who are not available or suitable for boarding-out to be provided with a home in the real sense; a home with foster father and foster mother in a 'house in the street' and indistinguishable from any ordinary home.

"On the other hand, the Homes on the estate on Hessle High Road with their spacious grounds would be put to better use in providing the reception home, homes for 'short-stay' children, homes for those children awaiting placement, and those —the minority—who would benefit by communal life. At the same time, by reducing the number of children per home to a reasonable level, it will be possible to provide more suitable staff quarters and badly needed indoor lavatory accommodation.

"The working boys' and girls' hostels are a pressing need, though in this respect we have so far received valuable assistance from local voluntary agencies."

One family home has already been opened in a quiet cul-de-sac about two miles from the centre of the City. It is within easy reach of shops, schools and playing fields, and has a pleasant garden of its own. Adaptation of the house cost only £171. The Committee appointed as foster parents a married couple, the woman to be employed full-time and the man to follow his ordinary occupation and to devote his leisure time to the recreational activities of the children. Eight children were allotted to the home, their ages ranging from fourteen to four, including some brothers and sisters. This certainly is a real and understanding effort to give true family life to the children, and it is entirely in the spirit and intention of the Children Act, 1948. Another home was in preparation at the time of the report. It is emphasized that there will be nothing to distinguish it outwardly from other houses on the estate, and the enthusiastic support of the city architect and his staff is duly acknowledged.

With regard to the question of Children's Homes, as distinct from the "family homes" it is satisfactory to learn that it has been possible to reduce the number of children in each and thus to facilitate some minor improvements. When more homes are opened, it is hoped that what are practically dormitories filled with beds and nothing else, will give place to rooms furnished and looking more like children's bedrooms.

In a section dealing with nurseries, Mr. Norris is rightly outspoken.

"Whilst talking of the babies and their re-actions to the Nursery it does seem an appropriate time to register my strong feelings against the callous attitude (and I use the word 'callous' advisedly) of those parents who, when faced with domestic difficulty, immediately think of placing their children in a 'Home,' without even exploring the possibility of placing them with relatives and friends. To my mind there can have been no thought whatever on the possible effect on the child's mind. In some cases emergencies arise which need not have done had there been the slightest forethought. Emergencies have arisen consequent on the confinement of a mother, where no arrangements had previously been made for the mother's admission to hospital, for a midwife, or, least of all, for the care of other children in the family."

Hull Attendance Centre

Already there are a few attendance centres at work in various parts of the country and experience is being gained in many ways. The whole system is still in the experimental stage, and those in

charge of the centres are finding out what methods are likely to produce the best results. They are also learning how the boys themselves react. The following extract from the report of the children's officer for Hull is therefore of interest.

" The Attendance Centre was opened on January 6, 1951. It is the only one of its kind in the country (*i.e.*, run by a Local Authority in a Remand Home), the other two, at Peel House, London, and at Smethwick, being conducted by the police in police buildings. The number of boys in attendance during the year has fluctuated a good deal and there have never been more than sixteen at one time. All the boys have been ordered to attend for the maximum period of twelve hours and are compelled to attend for one hour each Saturday for twelve weeks, either in the morning in the case of school attenders or in the afternoon in the case of lads in employment. The times of attendance, from 10.30 to 11.30 in the morning and from three to four in the afternoon, are such as to cause the utmost interference with their leisure, and it is obvious from their re-action that the boys find their attendance at these times very irksome and are glad when their period of committal is at an end. They are given strenuous P.T. exercises and fatigue duties and, apart from one isolated attempt to avoid it by pleading unfitness, the boys generally take it in good part. There is no doubt that they regard it as a severe form of punishment and as something to be avoided in the future.

" Of the thirty-eight who have attended during the year only three have later been committed to the Remand Home. In two of these cases the boys committed further offences before completing their attendances at the Attendance Centre. It is significant that the timekeeping of the boys has been excellent and unauthorized absence is practically unknown—an indication of the seriousness with which the boys view the Magistrates' Order requiring them to attend."

Boarding-out and Adoption

Since it is generally thought that the happiest solution of the problem of the " deprived " child is adoption, it is satisfactory to read in this report that during the past year, strenuous efforts have been made to board out children at nursery age ; this proved successful and has also resulted in an increase in the number of applications being received to adopt children who had been first placed out as boarded-out children. The Senior Welfare Officer has been stressing, in her talks to various associations, the need for more foster homes. Inasmuch as we so often hear of the difficulty of finding enough of such homes, it is gratifying to learn that in Hull the supply of children for boarding-out is, at the moment, less than the supply of foster homes for normal children. The problem remains, of course, where a child is not normal mentally or has formed habits which, for some time at least, preclude the possibility of boarding-out.

" It is again the same story that the most urgent need of foster homes is for that group of children who are ' too old,' ' the wrong religion,' ' the wrong colour,' or who have such behaviour problems as to despair of them ever fitting into a substitute home."

Rogues Roost—Treasure Trove

The other day a workman whilst repairing the thatch of an old cottage named " Rogues Roost " at Axminster in Devon, found two spade half guineas and six third guineas, minted in the reign of George III, in the roof. The coroner for East Devon, Mr. C. N. Tweed, said that in his forty years as coroner he had functioned only once before at a similar inquest. A jury found the coins were treasure trove.

Treasure trove is when any gold or silver coin, plate or bullion, is found in the earth, or other private place, the owner being unknown, in which case the treasure belongs to the Crown. The offence of concealing discovery is a common law misdemeanour, punishable by fine and imprisonment and may be committed not only by the finder but by anyone who receives it knowing it to be treasure trove.

The coroner, at the conclusion of the inquest, said that the coins would be sent to the British Museum. Usually, unless they are retained as specimens, they are returned to the finder; if retained payment equivalent to their value, is made by the Treasury.

A coroner has jurisdiction to hold an inquest on treasure trove and to inquire who were the finders ; when appropriate he also inquires for those suspected of concealing it. This common law jurisdiction is preserved by s. 36, Coroners Act, 1887. We wonder if local lore originated and preserved the unusual name of the cottage. King George III reigned from 1760 to 1820 and this was the period when we lost the American Colonies, which won their independence and became the United States of America. It was also the time of the French Revolution ; the victory of Trafalgar was in 1805 and Waterloo in 1815. Incidentally, during this reign, John Wilkes won the right of the press to report and comment upon the conduct of the government and of Parliamentary business.

Following the Napoleonic Wars, numerous wasters and sturdy beggars roamed the country, and the Vagrancy Act, 1824, was passed to deal with the categories therein designated : Idle and disorderly persons, rogues and vagabonds and incorrigible rogues. Was it possibly one of these incorrigibles who stamped his reputation so indelibly upon the little cottage at Axminster ? How much of historic truth may be embedded in what is often regarded as merely local lore or romantic names.

Social Security Finance

It has been suggested in usually well-informed quarters that the Labour Party are likely to include in their next election manifesto a scheme to introduce a social security tax instead of the present contributory national insurance scheme. The tax would then replace the weekly contributions now made by employers, employees, self-employed persons, and non-employed persons. It is suggested that the tax would be based on ability to pay and would be collected in the same manner as income tax. At first sight this scheme may seem rather attractive, as the contributions now payable and which will be increased next October to a total of over ten shillings a week for each employed person, have risen so considerably. The present system has, however, the merit of making people realize that social security, desirable as it is, must be very costly. Even then, few people appreciate that only a small fraction of the expenditure on the hospital and the health services is met from the insurance fund and that most of the vast cost of the hospitals is borne from general taxation. When demands are made for further increases in insurance benefits it should follow that these will involve increased contributions. If, however, the cost is to be met from a form of taxation it will only be one stage, as is the experience of Australia, to the cost of social security being one item—and a very heavy item—in the budget expenditure in the same way as education or the health services. The finance of the Social Security scheme in Australia is causing much anxiety and it is now contemplated that an insurance scheme will be introduced. Surely the present scheme which has been continually followed and expanded in this country since the first insurance scheme was introduced some forty years ago should not be abandoned.

MORE ABOUT THE PRESS

Our long article upon "The Press in Court," p. 338, *ante*, had been passed in proof when a correspondent sent us three cuttings which have a bearing on its subject. In one Hallett, J., was trying a case on circuit which (with the usual reluctance of the newspapers to say precisely what is charged) was spoken of as "offences by a husband against his wife." The context, and the sentence of eight years, leave little doubt that the offence was sodomy, many times repeated. The learned judge described it as "concerning matters he had never struck in forty years' experience," and suggested that "members of the opposite sex might well leave" as was done by all but half a dozen. On the facts appearing in the newspaper, there was no ground to suppose that the presence of females in the court would render justice unattainable, and therefore the learned judge could not have insisted that the last half dozen should follow the remainder. Nobody would maintain that a judge upon assize is not entitled to "suggest," but the case was exactly of the sort which Lord Loreburn had in mind in the remarks about certain criminal cases which we quoted, p. 340, *ante*, from his speech in *Scott* v. *Scott* [1913] A.C. 417; 82 L.J.P. 74; this being so, we think that Hallett, J., might have been wiser to refrain from his suggestion, which most women in the court probably understood as a command. Indeed, from the same point of view as was mentioned in parenthesis at p. 341, *ante*, with reference to incest, it is quite possible that the presence of women would have been desirable. The prisoner's wife had had five children by the age of twenty-five; the husband drank and beat her. The learned judge was "appalled" and told the prisoner that he had never heard of such a case or found anything similar in books: had he consulted an experienced sexologist he would have learnt that the prisoner and his wife, and many other married couples of the same type in the area covered by that assize, were probably not aware that it is a crime. From the point of view of public education, it is pretty sure to be a mistake to start by expecting among the female audience in court the same delicacy of feeling as the judge or magistrate takes for granted in his wife and daughters. In the second case (in the same week) of those we have just had brought to our notice, a police superintendent, prosecuting in a provincial juvenile court upon charges specified loosely as "offences against a girl of fourteen" by four boys of sixteen is reported as "advising members of the public to leave the court" before the evidence was given. Apparently his advice did not extend to press representatives (since a report, of a sort, did get into the newspapers) but even so the superintendent's "advice" was in our view wrong. He was no doubt entitled (as would have been any other prosecutor) to make a submission to the court, either for purposes of s. 37 of the Children and Young Persons Act, 1933, or in order that the court should consider whether the case was so exceptional that its reserve power at common law, to ensure justice, must come into play. But the power of excluding persons who by statute or at common law are entitled to be present is essentially a power of the court. It is generally undesirable that a police officer should take the initiative in inviting the court to exercise that power; nothing would be more likely to put into people's minds the idea of that "police state" which is one of the *clichés* of today. And in a juvenile court those members of the public who are present have a statutory right to be there, equally with the police officer himself, until the court—within the four corners of the Act of 1933—directs otherwise. For a police officer to take it on himself to give direct advice to those persons to leave is nothing less than an improper usurpation.

The third of these curious cases is given in the newspapers with a little more particularity. It was of an application to the Bromley bench for consent to the marriage of an infant, and press representatives were requested to withdraw. On their protesting that in previous cases of the same type this had not been asked, the chairman is reported to have said "We are now told the court has discretion in these matters, and the right to take these cases *in camera*. My colleague thinks that course should be taken." The advice given (by the assistant clerk) was said to have been that "the same procedure applied as in matrimonial courts." This is correct, for applications for consent to marry are included in the Summary Jurisdiction (Domestic Proceedings) Act, 1937, but it does not lead to the conclusion which was drawn by the Bromley bench. Section 2, already spoken of at p. 341, *ante*, prohibits the presence of persons other than some who are specifically mentioned. But those mentioned include "any other person whom the court may permit to be present." The next following words introduced by "so however" (p. 342, *ante*) indicate a bias by Parliament in favour of allowing persons to be present, and representatives of newspapers and news agencies are again specially protected. To exclude the latter, therefore, the court could rely on nothing but the common law power of exclusion where this is unavoidable in order to secure that justice will be done: *vide* our article at pp. 338 *et seq.*, *ante*, *passim*. There may, perhaps, be cases even of consent to marriage, where excluding the press is unavoidable for this reason, but we find it hard to think what they can be. Marriage is not a matter which merely concerns the would-be spouses themselves and an objecting parent or guardian. It concerns the whole community, and elaborate provisions exist for antecedent publicity, whether for infants or adults. When a court takes on itself the serious responsibility of considering whether it will permit an infant to enter on the married state, overruling the safeguard normally required in the shape of parental (or guardian's) consent, it seems to us to be peculiarly the sort of jurisdiction which the press should have the opportunity of watching. It is true that r. 4 of the Guardianship of Infants (Summary Jurisdiction) Rules, 1925, S.R. & O. 1925, 960 L. 24, enacted that "the court shall have power to hear such applications *in camera* if it considers it expedient in the interests of the infant that the application should not be heard and determined in open court." But, as *Stone* points out, this rule must be read subject to s. 2 of the Act of 1937, and, in any event, it is difficult to think of circumstances which would make exclusion of press representatives "expedient in the interests of the infant," who *ex hypothesi* is about to enter, if the application is successful, into a new relationship which the press will be at liberty to make as public as they wish.

It is right to say, in this context, that the rules of 1925 are continued by s. 79 (2) of the Marriage Act, 1949, as if made under s. 3 (5) of the last named Act. Section 3 (5) authorizes rules of court to be made enabling applications for consent to the marriage of an infant to be heard otherwise than in open court. It may perhaps be argued that the statutory continuance in 1949 of rules in this sense made before the Act of 1937 re-establishes the full force of those rules, insofar as they might be inconsistent with the Act of 1937. The Bromley magistrates might therefore, if their decision to exclude the press were challenged in the High Court, have an answer which would not have been open to the Windsor magistrates in the case we discussed in our main article. But it would, in our opinion, have been a rather shaky answer, dependant upon a pure technicality of dates. We regard it as

decidedly the safer view that the Act of 1937 prevails against the rules of 1925, so far as there is inconsistency. We say this for two reasons, first because the continuing provision itself, s. 79 (2) of the Act of 1949, only continues rules "if in force at the commencement of this Act," and a rule inconsistent with a statute of later date than the rule is not, properly, "in force." Secondly, the Act of 1949 was expressed by Parliament to be pure consolidation, except as otherwise declared in its long title, and it must be taken to have been intended by Parliament to leave the law unaltered.

THE MAGISTRATES' COURTS BILL

We continue here the article begun on p. 386 detailing some of the minor amendments and improvements which are proposed.

Use before examining justices of statement taken under Criminal Law Amendment Act, 1867, s. 6.—As the law now stands a statement taken under s. 6 from a person dangerously ill and not likely to recover can, subject to the safeguards in the section, be used in evidence at the trial of an accused person. There is, however, no provision enabling it to be used similarly before examining justices, and it is thought that in a case where such a statement could properly be used at the trial it ought to be available as part of the evidence which the examining justices may consider. Clause 41 of the Bill gives effect to this proposal.

Defining jurisdiction of justices to deal with complaints.—Although a practice has grown up of limiting the jurisdiction of justices hearing complaints to those matters arising within their jurisdiction s. 1, Summary Jurisdiction Act, 1848, does not so define their powers. So far as informations are concerned that section authorizes the issue of process when the offence is alleged to have been committed within the jurisdiction of the issuing justice. This is maintained by cl. 1 (2) (*a*) of the Bill. So far as complaints are concerned s. 1 of the 1848 Act gives jurisdiction *where the justice has by law authority to make an order* and nowhere is this authority defined. It is stated in the memorandum that it is believed that the general rule is to limit the issue of process on complaints to matters arising within the petty sessions area for which the issuing justice acts. We are not prepared to say to what extent this rule (restricting jurisdiction to the petty sessional area rather than to the county or borough) has been observed. It is sufficient to note that it is adopted in the Bill, cl. 44, which will make the rule of universal application, subject to any express provision, in any Act or in the rules, which may specify otherwise.

Bastardy proceedings.—By Summary Jurisdiction Act, 1848, s. 35, the Act does not apply to the issue of process and other matters relating to bastardy proceedings, and one must look to the Bastardy Laws Amendment Act, 1872, s. 3. It is now proposed to apply the general provisions of the Summary Jurisdiction Acts to bastardy proceedings, without, however, doing away with the main differences between those proceedings and others. We see, therefore, that in cl. 51 of the Bill it is provided that application for a summons under s. 3, *supra*, is to be made by complaint and that if this is made before the child's birth it must be substantiated on oath. Also, subject to the provisions of the Maintenance Orders Act, 1950, s. 3 (2), such a complaint may be heard only by a magistrates' court acting for the petty sessions area in which the mother resides. As these provisions are now incorporated in the Bill the necessary repeals are made in s. 3 of the Act of 1872. It is also provided that no such order may be made without hearing the evidence of the complainant as required by s. 4 of the Act of 1872. The part of the said s. 4 which deals with what evidence the court is required to hear and what orders it may make (except that as to costs of the proceedings) is left standing, but the remainder is repealed (*see* sch. 6 of the Bill). The Bill provides in cl. 74 for the enforcement of arrears under the order, making the procedure of an order on complaint the appropriate one, and requiring that such a complaint shall not be heard except in the presence of the defendant. Power to issue a warrant for this purpose is maintained. No complaint is to be made before the fifteenth day after the making of the order sought to be enforced, thus again preserving existing law.

It is an obvious convenience to have these provisions incorporated in the general statute regulating proceedings in magistrates' courts. The provision as to the backing, for execution elsewhere in the United Kingdom, of an English warrant to compel the appearance of a putative father who is in arrears under an order is not repeated in the Bill, as it has become unnecessary in consequence of the Maintenance Orders Act, 1950.

Award of costs in civil cases.—There are at present, in various statutes, overlapping provisions as to the award of costs in civil cases heard by magistrates' courts. The Bill proposes, in cl. 55 to summarize all these and so to have only this one provision regulating the matter. The memorandum proposes that this clause be substituted for so much of ss. 16, 18, 24 and 26, Summary Jurisdiction Act, 1848, s. 4 of the Bastardy Laws Amendment Act, 1872, ss. 6 and 47, Summary Jurisdiction Act, 1879, as relates to the award and enforcement of costs and for s. 31 of the Metropolitan Police Courts Act, 1839, s. 5 (*d*) of the Summary Jurisdiction (Married Women) Act, 1895, s. 5 (2) (*d*) of the Licensing Act, 1902, and s. 31 of the Criminal Justice Administration Act, 1914.

The proposal suggests that it is difficult to state with confidence the full effect of the existing enactments and their relation to each other, but that it is thought that what is proposed will conform in the main with existing practice, though not wholly with existing theory. For our purpose it is sufficient to note that the amount of costs awarded must always be specified in the order, or order of dismissal, and that, with the exception set out in sub-cl. (4) all costs ordered under the clause shall be enforceable as civil debts. The exception is that in proceedings relating to an order for periodical payments which is enforceable as an affiliation order costs awarded in the proceedings *against the person liable to make the payments* are enforceable in like manner (*see* cl. 55 (4)).

Proceedings under Maintenance Orders (Facilities for Enforcement) Act, 1920, as domestic proceedings.—It is proposed, by an enlargement of the definition of domestic proceedings, to include within that definition proceedings under s. 3 or s. 4 of the Act of 1920, other than proceedings for the variation of any provision for the payment of money contained in an order made or confirmed under those sections. A consequential amendment is thus made necessary in s. 11 (5) (*b*) of the Justices of the Peace Act, 1949, so that jurisdiction under the said ss. 3 and 4 is also transferred from the City of London to the County of London. The memorandum states that the nature of the proceedings under the 1920 Act and the kind of evidence likely to be produced are the same as in cases to which the definition at present applies.

Enforcement of payment of sums adjudged by summary conviction or order.—The memorandum proposes various minor amendments affecting the procedure for the recovery of sums adjudged to be paid and some of these are as follows :

1. *Custody pending return to a distress warrant.*—It is thought wrong in these days that a court should have power as given by Summary Jurisdiction Act, 1848, s. 20, and by Bastardy Laws Amendment Act, 1872, s. 4, to detain a person in custody pending the execution of a distress warrant. The Bill, therefore, does not reproduce these provisions.

2. *Commitment warrant in lieu of distress.*—The Summary Jurisdiction Act, 1879, s. 21 (3) provides for the issue of a commitment warrant in lieu of a distress warrant, with the proviso that where no time is allowed for payment the commitment warrant shall not be issued in the first instance unless the offender has not sufficient goods to satisfy a distress or the levy of distresss would be more injurious to him or his family than his imprisonment. The Criminal Justice Administration Act, 1914, s. 1, prohibits immediate committal in default of a sum due on conviction unless, *inter alia*, the court is satisfied that the offender has sufficient money to pay forthwith. This requirement must frequently be in conflict with that of the proviso to s. 21 (3) of the 1879 Act. The latter section applies equally in the case of sums due in pursuance of an order such as an affiliation order, but its effect is now modified by the Money Payments (Justices Procedure) Act, 1935, s. 8. It is proposed, therefore, that the proviso to s. 21 (3) of the 1879 Act shall cease to have effect and it is not reproduced in the new Bill. For the substituted provisions, *see* cl. 64 (2).

3. *Scale of imprisonment in default of payment.* In s. 5, Summary Jurisdiction Act, 1879, the scale of alternatives in default of payment is related to the sums adjudged by the conviction. Therefore, if part payment is made before any alternative is fixed it is still open to a court to fix as the alternative period that which could have been fixed in respect of the full sum, giving the defendant no benefit from his part payment. This seems manifestly unfair, because had the same period been fixed at the time of conviction, part payment would then secure a reduction in the term of imprisonment to be served.

In the Bill this is altered by providing that where part payment has been made before the period of imprisonment is decided upon the maximum period applicable to the full sum shall be reduced proportionately to the amount paid, with a proviso that the maximum shall not be reduced, in any event, below five days. This is effected by sch. 3, as applied by cl. 64 (3).

4. *Postponement of issue of warrant.*—The Summary Jurisdiction Act, 1879, s. 21 (1) gives power to postpone the issue of warrants of distress of commitment, but the subsection does not apply in the case of civil debts. This exception is to be abolished and cl. 65 gives a general power to postpone the issue of distress and commitment warrants and requires in the case of the latter that the alternative period of imprisonment shall be fixed before the issue of the warrant is postponed.

5. *Allowing time for payment.*—The obligation to hold a means inquiry before committal in the case of a defendant who has in effect been allowed time for payment has sometimes been avoided by issuing forthwith a distress warrant, without in terms allowing time for payment. This will not be possible under the new Bill. Clause 69 (1) requires that, on conviction, a defendant shall be allowed at least seven days for payment unless he is committed forthwith on grounds corresponding to those now contained in s. 1 (1) Criminal Justice Administration Act, 1914. These grounds appear now in cl. 69 (2).

6. *Civil Debts.*—No change in procedure is involved but, for convenience, reference to the Debtors' Act, 1869, in connexion with the enforcement of civil debts in magistrates' courts, is being abolished, and the new Bill is self-contained in this respect. Clause 73 is the appropriate clause, and the maximum alternative of six weeks' imprisonment is preserved in the third schedule para. 4.

Securing the attendance of witnesses.—At present magistrates' courts have available powers under various Acts to enable them to enforce the attendance of witnesses and to secure the production of necessary documents. These powers are not identical and, without going here into detail as to the differences, here is what the Bill proposes shall be the law in future to secure the attendance of any witnesses likely to be able to give material evidence or produce any document or thing likely to be material evidence at *any inquiry by examining magistrates or on the summary trial of an information or hearing of a complaint :*

1. Application may be made to any justice of the county or borough for which the court sits.

2. A summons may be issued *without oath*, provided that the issuing justice is satisfied that the witness will not voluntarily attend or produce the document or thing.

3. *In criminal cases*, where the application is made on oath and the justice is satisfied thereby that a summons will probably be ineffective, he may issue a witness warrant in the first instance.

4. Where a summons proves ineffective, and the application is then substantiated on oath and proof of the service of the summons and of the payment or tender to the witness of reasonable costs and expenses is given, the court may issue a warrant if there appears to be no just excuse for the failure to attend.

5. Any person appearing before a court as witness (*whether as a result of witness process or not*) who refuses without just excuse to be sworn or give evidence or to produce any document or thing may be committed to custody for a period not exceeding *seven* days unless he sooner gives evidence or produces the document or thing.

These provisions appear in cl. 77. It is important to remember, in considering them, the additions made by the Bill to the cases which will in future be by way of an order on complaint, so that, for instance, a witness can be required to produce documents in bastardy proceedings. Process may be issued in respect of any witness in England or Wales. By cl. 103 a witness warrant, other than one issued in bastardy proceedings, may be endorsed for execution in other parts of the British Isles.

NOTICES

The next court of quarter sessions for the Isle of Ely will be held at Wisbech on Wednesday, July 2, 1952.

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, July 7, 1952.

The next court of quarter sessions for the borough of Guildford will be held on Saturday, July 12, 1952, at the Guildhall, at 11 *a.m.*

STREAM OR SEWAGE?

By W. E. LISLE BENTHAM

A learned correspondent has challenged my statement in an article at p. 276 of the present volume that a natural stream may become in law a public sewer by the reception of surface water drainage, but not by the reception of soil water sewage.

In the first place, he suggests that *Falconar* v. *South Shields Corporation* (1895) 11 T.L.R. 223 is merely authority for the proposition that surface water is as much sewage, in a legal sense, as is foul water, and that therefore a stream conveying surface water is as capable of becoming a public sewer as is an artificial conduit conveying foul water, but he agrees that whether or not a water course has in fact become a sewer is largely a question of degree. Secondly, he avers that the question at issue in *George Legge & Son Ltd.* v. *Wenlock Corporation* [1938] 1 All E.R. 37, 102 J.P. 93, was whether a natural stream could become a public sewer (before 1937) by reason of its having been used for the conveyance of sewage (which term he submits must here be understood to include both foul and surface water) contrary to the provisions of the Public Health Act, 1875, and the Rivers Pollution Prevention Act, 1876, and that that question was answered in the negative by the House of Lords in that case. Thirdly, he submits that, had the stream in question been in fact used as a sewer before 1876, either for foul or for surface water, the decision in the *Wenlock* case would have gone the other way. Lastly, he appears to take the view that, whatever may have been the law previously, the position was materially altered by the coming into operation of the Public Health Act, 1936, on October 1, 1937.

Since artificial sewers have for many years been constructed, both for soil water and also for surface water, it may at first seem curious that there should be any difference in legal effect between the discharge of soil water and of surface water into a natural stream, but it is worth noting that, even as regards artificial sewers, the legislature has for long provided for the separation of foul water from mere surface water and thus drawn a distinction between the two kinds of sewage (*see, e.g.*, s. 18 of the Public Health Act, 1875, which was substantially reproduced in s. 22 of the Act of 1936). There is no statutory definition of "sewage," but clearly it may consist of either solid or liquid matter (*see* s. 3 of the Rivers Pollution Prevention Act, 1876). In common parlance, it may be supposed to mean anything carried by a sewer, and "sewer," apart from special definition (as to which *see* s. 4 of the Act of 1875 and ss. 20 and 343 of the Act of 1936), comes from the verb "to sew," *i.e.*, to drain, but has a more extended signification than drain, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, etc. In the common sense of the term, it means a large and (generally, though not always) underground passage for fluid or feculent matter from a house or houses to some other locality: *per* Kindersley, V.-C., in *Sutton* v. *Norwich Corporation* (1858) 22 J.P. 353. It is only when we turn to case law that we find the legal sense in which the expression "sewage" is understood and that, while it may denote pure surface water, it usually means foul matter, solid and/or liquid, either alone or else mixed with surface water.

In *Falconar* v. *South Shields Corporation, supra*, the evidence was that the Dean Burn was formed by the confluence of two smaller brooks, called the Harton Burn and the Colliery Burn, which met a little way above the boundary of the plaintiff's premises; that for many years past about a hundred houses from the neighbouring villages of Harton and Cauldwell had drained into the Harton Burn; that some twenty or thirty cottages which were till recently not supplied with drains had emptied slops and refuse into the Colliery Burn; that the Dean Burn over some parts of its course was a covered sewer; and that the sewage matter flowing into these burns had been largely increased within the last year or two, owing to extensive building operations carried on by the Ecclesiastical Commissioners. In these circumstances, the Court of Appeal found as a fact that the Dean Burn had for many years been used as a sewer, not only for the reception of surface drainage, but also for refuse matter of every description, until, in the words of Lindley, L.J., it was now a dirty, filthy sewer. It therefore seems that, in this case, the court was using the term "sewage" as including both foul and surface water.

The case of *Newcastle-upon-Tyne Corporation* v. *Houseman* (1898) 63 J.P. 85 related to the Ouseburn, a natural stream which runs from the Gosforth urban district through Jesmond Dene into the Tyne, being tidal for a short distance from its outfall. The facts were that for some long period it had been polluted by the ever-increasing sewage from the Gosforth district, but that, in fulfilment of one of the conditions of a gift by Lord Armstrong of land for the laying out of the Dene a sa public park, and by arrangement with the then Gosforth local board, the Newcastle Corporation had by a scheme under its local Improvement Acts diverted such sewage into the tidal portion of the Ouseburn and so purified the water in its upper reaches. The pollution of the tidal portion, however, had become so great that, under the special wording of the local Acts, Bryne, J., had no hesitation in declaring that portion to be a sewer. It seems, therefore, that in this case the court was interpreting the term "sewage" as consisting mainly of foul matter.

The question which arose in *West Riding of Yorkshire Rivers Board* v. *Rueben Gaunt & Sons, Ltd.* (1902) 67 J.P. 183, was whether the Farsley Beck, which before 1870 had been a natural stream and indeed the water supply for the surrounding community, but which had later become polluted until the introduction of public sewerage and sewage purification in 1897, when it reverted again to a pure stream, had in fact become a sewer so as to entitle the respondents to discharge manufacturing effluent into it. The court held that it had not, and that the mere fact that sewage has been discharged for a number of years into a water course, so that it has become polluted, is not of itself sufficient to turn it into a sewer. Here again the court was apparently employing the word "sewage" in this connexion as meaning soil water contamination, because in his judgment Lord Alverstone, C.J., in considering how far the question was affected by direct enactment, referred to s. 4 of the Local Government Act (1858) Amendment Act, 1861, as re-enacted by s. 17 of the Public Health Act, 1875, and also to s. 4 of the Rivers Pollution Prevention Act, 1876, under which the fouling or poisoning of any natural stream was prohibited, and declared that the result of the authorities and the statutes appeared to be that, if before 1861 the watercourse had become a sewer, the respondents had the right of discharging their effluent into it, but not if it was still a natural watercourse. To this he added: "Further, we think that after the passing of the Acts of 1861, 1875, and 1876 the local authority could not merely by the illegal act of discharging sewage into a watercourse make that watercourse a sewer."

It is when we come to consider the *Wenlock* case, however, that the distinction between surface water drainage and soil water sewage becomes even more apparent. That case concerned a natural channel which for the greater part of its length ran in a covered culvert through the plaintiff's land, and to which certain storm-water or surface-water drains had been connected.

The corporation admitted that from 1909 onwards the sewage from some twenty houses had been discharged into those surface-water drains and that after 1925 a further forty-four houses had begun discharging sewage into them, but pleaded that it could not prevent what had become a prescriptive right in the owners of the houses to do so. Lord Macmillan in his judgment, in connexion with the question whether a natural stream can ever in law become a sewer by reason of an artificial change in the character of its flow, apart from any question of illegality, stated : " It has to be remembered that a channel may be a sewer though it may carry no sewage and though its contents consist solely of innocuous surface drainage." From this it is clear that he was using the word " sewage " as meaning polluting material as distinct from surface water. He then referred to the *South Shields* and *Newcastle-upon-Tyne* cases, but stated that they were not in point, because in those cases the legality of the discharge of sewage into the stream was not in question. After a reference to the remarks of Lord Alverstone in the *Yorkshire* case quoted above, he proceeded : " *Prima facie* it would seem remarkable if it were possible to legalize the pollution of streams by contravening an Act designed to prevent their pollution." Later in his judgment, after dealing with the Scottish case of *Airdrie Magistrates* v. *Lanark County Council* (1910) 102 L.T. 437, which he pointed out had decided that it was a legal impossibility for what was in law a " stream " protected by the Act of 1876 to become in law an unprotected sewer, simply by reason of infringements of the law designed for its protection, he added : " There is no such hybrid known to the law as a watercourse into which, as a sewer, sewage may legitimately be discharged and into which, as a stream, sewage may not be discharged."

Now there is no suggestion in the *Wenlock* case that the Court was concerned with the discharge into the natural channel from the storm-water or surface-water drains. What they were considering was the effect of the discharge of what Lord Maugham in his judgment described as " house-sewage." The decision depended, not upon the discharge of surface drainage, but on the fact that the channel had been actually polluted with soil or foul sewage from the houses. This the Court held and indeed this was admitted, to be contrary to the express provisions of the Act of 1876 for the protection of what was also admitted to be a " stream " within the definition in s. 20 of that Act, since it did not come within the exception of " watercourses mainly used as sewers *and* emptying directly into the sea or tidal waters " ; and, as Lord Maugham said, " there is no case in the books in which repeated violation of the express terms of a modern statute passed in the public interest has been held to confer rights on the wrongdoer. Such a contention is, indeed, quite untenable." Therefore, such pollution could not in law turn the channel into a sewer within the meaning of the Public Health Act, 1875. It appears to follow that, had the channel consisted entirely of innocuous drainage so that no question of pollution arose, it might well have been held to be a surface water sewer, according to the degree of its use as such, vested in and repairable by the corporation, but, owing to the admixture of foul and surface water, this question could not arise on the facts of that particular case.

It is evident from the *Wenlock* case, and I agree with your correspondent, that, had the channel been in fact already vested in the corporation under s. 13 of the Public Health Act, 1875, no question about it could have arisen, for Lord Macmillan pointed out that in the *Airdrie* case the defenders had made no claim that the burns in question had already vested in them as sewers, and he explained the matter thus : " In the case of a sewer vested in the local authority, the owners of adjoining property are entitled to discharge their sewage into it, so that, on this argument, if a natural stream in consequence of illegal pollution becomes in fact sufficiently foul to merit the legal appellation of a sewer, and so to vest in the local authority, the further pollution of it ceases to be an offence, and becomes a right."

It does not appear that the Public Health Act, 1936, has made any material change in the law as elucidated in the *Wenlock* case, for s. 20 has merely preserved the *status quo* as regards sewers already vested in a local authority under s. 13 of the Act of 1875, and s. 30 has substantially re-enacted the prohibition against the fouling of streams, etc., formerly contained in s. 17 of the Act of 1875, which prohibition has been rendered even wider in its scope by ss. 2 and 7 of the Rivers (Prevention of Pollution) Act, 1951, superseding that formerly contained in ss. 2, 3, and 4 of the Act of 1876.

On the other hand, s. 13 of the Act of 1875, which with certain exceptions vested in the local authority " all existing and future sewers," has been repealed by s. 346 and sch. 1 of the Act of 1936, so that " future sewers," after October 1, 1937, no longer vest in local authorities unless they do so as public sewers by virtue of s. 20. In other words, streams cannot now become public sewers by mere usage, unless constructed or acquired by them as such under s. 15 or adopted by them as such under s. 18. Incidentally, it seems odd to talk about " constructing " a stream but presumably this would refer, *e.g.*, to the construction of a mill stream.

In conclusion, therefore, whilst I still maintain that there is a distinction to be drawn between surface water drainage and foul water sewage in the legal effect of its discharge into a natural stream, I am indebted to your correspondent for drawing attention to a point of some importance. As Lord Maugham said in the *Wenlock* case, the authorities on the subject are by no means easy in all cases to reconcile and in some cases to understand and, prior to the Act of 1936, the law had for nearly fifty years been (in the words of Scrutton, L.J. in *Hill* v. *Aldershot Corporation* (1932) 96 J.P. 493) " chaotic and contradictory " and " a disgrace to English legislation." It seems reasonably clear, however, that my former statement should be qualified to the extent that, since October 1, 1937, neither the discharge of surface water nor of soil sewage into a natural water course can turn it into a *public* sewer, unless it is already vested in the local authority as such.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Somervell, Birkett and Hodson, L.JJ.)

ASTON CHARITIES TRUST, LTD. *v.* STEPNEY BOROUGH COUNCIL

June 11, 1952

Compulsory Purchase—Compensation—Assessment—" Land devoted to a purpose of such a nature that there is no general demand . . . for land for that purpose "—" Reinstatement in some other place "—Acquisition of Land (Assessment of Compensation) Act, 1919 (9 and 10 Geo. 5, c. 57), s. 2, r. (5)—Town and Country Planning Act, 1944 (7 and 8 Geo. 6, c. 47), s. 57 (1).

CASE STATED by Lands Tribunal.

The claimant, a private limited company which was formed to administer a charitable trust, owned certain premises in Stepney which until 1940 it used as a Unitarian church and for religious and charitable activities connected therewith. After 1940, owing to war damage and to the departure from the neighbourhood of part of the local population in whose interest the trust was administered, a portion of the premises remained unused. In 1942 the organ was removed from the part of the premises used as a church, which was on the first floor, and was stored in one of the rooms on the ground floor and a company agreed to take a tenancy of such parts of the

premises as were not in use by the claimant to store and repair organs from other damaged churches. By a tenancy agreement, dated September 4, 1944, the claimant let the premises to the company for the purpose of the company's business, but reserved the use of two rooms which it continued to occupy for the purposes of the trust, the intention being to terminate the tenancy and to resume possession of the entire premises for the purposes of the trust as soon as possible after the end of the war with Germany. On September 15, 1945, the Minister of Health confirmed a compulsory purchase order made by the local authority in respect of the property, and on February 25, 1946, the authority served a notice to treat on the claimant. It was now the intention of the claimant to set up a similar church and centre about four miles away from the acquired property and it was contended on its behalf that compensation should be assessed on the basis specified in the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, r. (5), as the land was devoted to a purpose of such a nature that there was no general demand for land for that purpose. The authority contended that r. (5) did not apply (*a*) as the premises did not come within the rule at the time of the notice to treat, and (*b*) as the setting up of a similar church and centre four miles away was not "reinstatement" within the meaning of the rule.

Held: the words "devoted to a purpose" in s. 2, r. (5), of the Act of 1919 introduced a conception of intention and indicated a different test from that of the *de facto* use of the premises at the date of the notice to treat; in view of the circumstances which led up to the letting, during the currency of the letting the premises continued to be devoted to purposes of such a nature that there was no general demand for land for that purpose, within the meaning of r. (5), and they were so devoted on the date of the notice to treat; "reinstatement", within r. (5), was a question of degree and of fact; and, on the facts, reinstatement in some other place was *bona fide* intended within the meaning of the rule; and, therefore, compensation was to be assessed in accordance with the rule.

Counsel: *Mitchison, Q.C.*, and *Horner*, for the acquiring authority; *Lawrence, Q.C.*, and *Comyn*, for the claimant.

Solicitors: *J. E. Arnold James*, town clerk, Stepney Borough Council, for the acquiring authority; *Cummings, Marchant & Ashton* for the claimant.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Slade and Parker, JJ.)

STEVENS *v.* DICKSON AND ANOTHER

June 12, 1952

Intoxicating Liquor—Drunkenness on licensed premises—Room in public house where wedding reception had been held—Exclusion of public—Licensing Act, 1872 (35 *and* 36 *Vict., c.* 94), *s.* 12.

CASE STATED by Middlesex justices.

At a court of summary jurisdiction informations were preferred by the appellant, William Stevens, a police officer, charging the respondents, Walter Dickson and Sidney Beattie, with being found drunk on licensed premises, contrary to s. 12 of the Licensing Act, 1872. It was established that an order was made permitting a public house to be open between 2.30 *p.m.* and 5.30 *p.m.*, on the day in question because a wedding reception was being held on the premises. At 8.30 *p.m.* the respondents, who were two of the guests, were found to be drunk in the room where the reception had been held. The justices were of opinion that, the room having been privately hired for the reception, the public had no right of access thereto, that the hirer had exclusive possession of the room, and that there was no possession whatever in the licensee, and that, therefore, the room ceased to be licensed premises. They dismissed the informations without hearing the defence, and the prosecutor appealed.

Held, that the licence had been granted and was in force in respect of the whole of the premises, and the room in which the reception was held remained part of the licensed premises. The justices, therefore, came to a wrong decision, and the case must be remitted to them to hear and determine.

Counsel: *F. H. Lawton* for the appellant. The respondents did not appear.

Solicitor: *Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Devlin and Gorman, JJ.)

NATIONAL ASSISTANCE BOARD *v.* WILKINSON

June 10, 1952

Husband and Wife—Maintenance—Desertion by wife—Husband's liability to maintain—National Assistance Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 29), *s.* 42 (1).

CASE STATED by Durham justices.

At a court of summary jurisdiction sitting at Bishop Auckland, two complaints under s. 43 (1) of the National Assistance Act, 1948, were preferred by the National Assistance Board against one George Wilkinson in respect of the maintenance of his wife, Edith Wilkinson. The complaints alleged that the husband was liable to maintain his wife under s. 42 (1) of the Act and the board applied for summonses to be served on him calling on him to show cause why orders should not be made on him under s. 43 to repay the sum of £26 18*s.*, assistance given to his wife by the board, and also to pay £1 4*s.* 6*d.* a week, the sum being given by them weekly to the wife.

It was proved or admitted that the husband was married to Edith Wilkinson on March 16, 1949, and the matrimonial home was set up in the house of the wife's mother. In December, 1949, a child of the marriage was born. In January, 1951, the husband left the matrimonial home to live with his parents, and until February 23, 1951, he paid £2 a week to the wife by way of maintenance of herself and the child. From then until the issue of the summons he paid her 15*s.* weekly for the maintenance of the child. The husband found two rooms and invited the wife to join him there, but, having inspected the rooms, she refused to do so. The husband was earning £7 to £8 a week.

The justices found that, although the accommodation offered was inferior to that in the wife's mother's house, the wife was not justified in refusing to join her husband in the rooms, that the rooms were still available, that the wife still refused to join her husband, and that her refusal was unreasonable. The justices accordingly held her to have deserted him. They considered that the liability under s. 42 (1) of the Act was not absolute, and that the wording of s. 43 (2) enabled them to have regard to the conduct of the wife, and they dismissed the complaints. The board appealed. The National Assistance Act, 1948, s. 42 (1), provides: "For the purposes of this Act—(*a*) a man shall be liable to maintain his wife and his children, and (*b*) a woman shall be liable to maintain her husband and her children." Section 43 (1) empowers the board to make a complaint against a man where they have given assistance to his wife or children, and subs. (2) provides: "On a complaint under this section the court shall have regard to all the circumstances and in particular to the resources of the defendant, and may order the defendant to pay such sum . . . as the court may consider appropriate."

Held, that, prior to the Act of 1948 neither by common law nor by statute was a husband ever liable to maintain an adulterous wife or a wife who without good cause refused to live in the matrimonial home provided by him, the distinction between adultery and desertion being that an adulterous wife forfeited all rights of maintenance, while a deserting wife's right was only suspended. On the fair construction of s. 42 (1) of the Act it was not necessary to hold that the section took away a defence which had always been open to a claim, whether arising from common law or the poor law statutes, and since the Act a husband was no more liable to support an adulterous or deserting wife than he was before. The justices had come to a correct decision, and the appeal must be dismissed.

Counsel: *J. P. Ashworth* for the appellant board; *B. C. Sheen* for the respondent.

Solicitors: *Solicitor, National Assistance Board*; *Dowling & Hewitt*, Bishop Auckland.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

HEWITT *v.* HEWITT

Husband and Wife—Maintenance—Enforcement of order—Wife residing with husband at time of order—Departure of husband before three months had elapsed—Resumption of residence by husband, but not of cohabitation—Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 *and* 16 *Geo.* 5, *c.* 51), *s.* 1 (4).

CASE STATED by Warwickshire justices.

At a court of summary jurisdiction on November 30, 1951, a complaint was preferred by a wife in respect of arrears alleged to be due under a maintenance order previously made by the justices against her husband. The original order was made on May 26, 1950, and it was varied on November 17, 1950, the weekly amount payable being then increased. At the date of the original order the parties were residing in a house of which they were the joint owners, and they continued to live there till a day in June, 1950. The husband then left the house and lived at another address till October, 1950. He then returned to the house, where his wife was still living, and they continued to live there up to the date of the complaint. From the date of his return to the date of the complaint the parties occupied separate rooms, the wife performed no domestic duties for her husband, and there was no resumption of cohabitation. The justices, being of opinion that the case was distinguishable from *Evans* v. *Evans* (1947) 112 J.P. 23, held that the complaint was proved and made an order accordingly. The husband appealed.

Held, that under s. 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, so long as the parties continued to reside

together the order did not take effect, but it became effective once they parted, and, once the order had become effective, it remained in force unless the state of affairs visualized by s. 2 (2) of the Act—namely, a resumption of cohabitation—took place or the order was terminated by the justices on some recognized ground, *e.g.*, adultery by the wife. In the present case the order became effective as soon as the husband left the house in June, 1950, and, there having been no resumption of cohabitation, it was effective at the date of the complaint. The decision of the justices was, therefore, right and the appeal must be dismissed.

Counsel: *A. M. Wallace* for the husband; *Norman King* for the wife.

Solicitors: *Callingham, Griffith & Bate*; *Julius White & Bywaters* for *Penman, Johnson & Ewins*, Coventry.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

N.A.L.G.O. CONFERENCE 1952

Proceedings at the annual conference of the newly named National and Local Government Officers' Association (N.A.L.G.O.) held at Margate last week were coloured by an announcement of the national executive council on recent events in Douglas, Isle of Man.

Some months ago, said the statement, the corporation decided not to recognize the trade union organization of its staff through N.A.L.G.O. and not to observe in future the conditions of service laid down by the National Joint Council for Local Authorities' Administrative, Professional, Technical, and Clerical Services.

When the corporation refused to apply the latest salary scales of the National Joint Council, N.A.L.G.O. declared a dispute which the Governor of the Isle of Man referred to the Industrial Disputes Tribunal. The corporation then appealed to the court for an injunction to restrain the tribunal from dealing with the case.

While these proceedings were pending, the corporation served notices on the staff introducing its own conditions of service. One of these conditions was to the effect that no member of the staff can communicate information concerning the affairs of the corporation to outside parties and will be dismissed if he does so.

N.A.L.G.O. takes the view that this condition prevents the staff from communicating grievances or indeed any information concerning the staff's terms of employment to N.A.L.G.O. as their trade union and believes that this condition is deliberately designed to have this effect in pursuance of the corporation's anti-trade union policy. It regards the corporation's action as a challenge to the freedom of employees to participate in a trade union.

The conference delegates received this statement with considerable enthusiasm. They pledged themselves to resist the corporation's action by all available means, including legal process, trade union action, and full financial support to the members in the corporation's employ. They further agreed to raise any special levy necessary to maintain members who refused to sign the corporation's unilateral conditions of service.

A motion to the foregoing effect was moved by Mr. C. J. Newman, town clerk of Exeter, who said that the national executive council was advising N.A.L.G.O. members not to sign the corporation's document; they believed that they had no option but to fight this issue to the bitter end. The motion was seconded by Mr. P. H. Harrold, town clerk of Hampstead, and was carried unanimously amid demonstrations of strong feeling.

This display of unity in the ranks of the association was followed by others. Surbiton branch sought to divide the ranks by restricting membership to local government officers, thus excluding some 50,000 members in health and utility services: opposition was immediate and strong and the motion was quickly withdrawn.

Conference proceeded to change the name of the association so as to cover the categories of membership now outside the local government service. It also adopted new rules which provide machinery for enabling these sections to give full expression to their special interests in service matters.

A third reference to the solidarity of the association was made when Birmingham branch moved a declaratory motion deploring "any breakaway from the association." This referred, said the Birmingham delegate, to recent joint meetings of large branches to consider what they believed to be matters of common concern; these meetings had been misrepresented in the press and elsewhere as expressing a tendency for large branches to secede from the association—a rumour for which there was no foundation.

Discussions on wages, cost of living, and the like took their shape from the fact that a claim for an increase commensurate with the rise in the cost of living lies before the Industrial Disputes Tribunal at the moment and will be heard in July. The president, Mr. Lewis Bevan, in his opening address, said that N.A.L.G.O. did not like making constant claims for higher pay and would prefer a stabilised pound to a pound reduced in value plus a bonus to meet part of the loss in purchasing power. But there had been no halt in the rise in the cost of living. Though N.A.L.G.O. preferred a policy of restraint they could not pursue that policy to the point at which it threatened to beggar their members. If all their reasonable claims were to be ignored they must consider the stronger measures of self-protection which they had hitherto repudiated.

The policy of pegging local government salaries to some index like the Ministry of Labour index of wages was debated. The national executive council favoured it and proposed to raise it with the employers at a later stage; conference showed itself to be confused, adopting one motion in favour and one opposed to salary-pegging. A number of motions proposing long-term improvements in the lower salary ranges of local government staff, designed to improve the calibre of entrants, were referred to the national executive council to raise when they thought it expedient.

The long delay in inducing the employing authorities in the London area to increase the weighting which is paid over and above the standard national scales was criticized in a motion put forward by the association's metropolitan district council. A spokesman for the national executive council revealed that the employers had offered an increase in respect of the central London areas only; that this had been rejected by the staff side; and that unless the employers showed a change of heart the issue would be taken to arbitration.

Overtime in local government is paid for only in respect of the junior grades. Last year's conference directed the national executive council to seek an extension of the principle to all grades. Reporting back this year, the council described the proposal as unwise and impracticable. The arguments so impressed the conference that conference reversed its attitude and left the executive free to pursue their own policy. This was welcomed for the national executive council by a member who said it would ease their task in seeking some improvements in annual leave allowances if they were not at one and the same time to ask for less work and more pay.

Mr. John Edwards, M.P., addressed the conference and referred to the need for local government reform. People with specific enthusiasms, he said, always proceeded *ad hoc*; special authorities for special purposes inevitably resulted when legislatures, social reformers, and officers were in a hurry. Compendious authorities arose from reflection. The individual efficiency of separate undertakings was not the only consideration; civic freedom, social responsibility, and democratic virtue must also be cultivated.

The national executive council submitted a motion expressing regret that parliamentary time had not yet been found to introduce reforms to local government superannuation law. The terms of these reforms had been agreed with the Ministry of Housing and Local Government as well as with the local authority associations. They would not cost more either to ratepayers or to the staff; they represented in effect a readjustment of the benefits—a reduction in staff pensions to be set against the payment of lump sums on retirement and of pensions to the widows of staff.

A session was set aside for a discussion of health service problems. These fell into two main groups. There were those arising from the investigation of health service staffing by teams appointed by the Ministry of Health, and those deriving from the dilatoriness of the health service Whitley machinery. The Ministry was criticized on both counts. The teams of investigators (who included senior officers of the health service) had been assured that if any redundancy of staff was disclosed it would be allowed to work itself out by the normal process of wastage; this promise it was alleged had been broken and the Ministry had given instructions that staff reductions recommended were to be made forthwith.

The slowness of health service Whitleyism had been criticized, said delegates, not only by the staff affected but by the Select Committee on Estimates which condemned both the "often considerable delay in reaching a decision" and the ill-balanced management sides, overweighted with civil servants and with few or no representatives of the actual employers, the hospital authorities. The association, said the president, endorsed those criticisms; they did not seek to interfere with the selection of management sides, but would welcome the opportunity to negotiate with their real employers.

The shortage of suitable new entrants to the local government service was debated with reference to educational qualifications. The conference carried a motion declaring that better salaries were an essential pre-requisite if officers of the right calibre were to be recruited and induced to procure the professional qualifications considered necessary; but it supplemented this by another calling on local authorities to adopt a system of compulsory release with pay for all junior entrants up to eighteen years of age for one day or week or its equivalent for attendance at educational establishments. This, said the motion, would enable them to continue their general education and foster their professional studies.

The national executive council wished the conference to re-assert the association's policy of securing a well-qualified service and to this end proposed a motion recognizing the desirability of sound standards of entry and promotion and the provision of effective facilities for training within the service. The general spirit of the motion was acceptable, but objection was taken to the inclusion of reference to examinations as an essential condition of promotion; that the provision of such bars, if they were to exist at all, was a matter for the employers was the tenor of the criticism. Reference to these tests having been removed, the motion was accepted.

N.A.L.G.O.'s advocacy of publicity on behalf of local government is of long standing. The association submitted evidence to the Minister of Health's committee on local government publicity which had no little effect on the terms of the committee's report. In a motion put forward by the executive committee, the association has now proposed the establishment of a standing advisory committee to foster and co-ordinate work in this field.

A proposal that N.A.L.G.O. should re-enter the field of local government reform was proposed by Ealing branch but rejected by the conference for fear that so controversial an activity might hamper the association in its endeavours to protect the interests of its members.

Lord Burden addressed the conference and reminded his hearers that he had been associated with N.A.L.G.O. for twenty-five years. He thought that one could say without exaggeration that in the field of trade unionism the organization of municipal salaried staff and allied services was one of the most notable achievements of the present century. In the competitive world of today there was no need to be apologetic about the object of trade unionism, which was the maintenance and improvement of salaries and conditions of service. He hoped that it would soon be possible for parliament to deal with the revision and development of superannuation arrangements.

A motion moved on behalf of the national executive council dealt with the circulation of information from the headquarters of the association to the members. It declared that a membership fully informed on service conditions matters was essential to the association's well being and instructed the executive council to make such arrangements as would ensure, without prejudice to negotiations with employers, that members were kept informed of current events. The spokesman of the executive council stressed the need for recognizing the confidential character of National Joint Council negotiations at certain stages. Because of this, the executive opposed an amendment which would have required the promulgation of day-to-day negotiations "in line with the procedure adopted by other trade unions." That results were more valuable than information was the argument advanced against this wider plea, and the conference agreed.

The conference for the most part proceeded smoothly and in good humour. This fact, allied to skill and diplomacy of the president, enabled this large assembly to handle all but about seventy of the 346 items on the agenda paper. Several which were not reached by the time proceedings came to an end were of considerable interest.

They included a motion deploring cuts in the social services, which might have introduced a controversial note, unless conference had preferred to adopt an amendment with the less argumentative object of seeking protection for members adversely affected by such cuts. Motions relating to affiliation to the Trades Union Congress were perhaps designedly kept to the last in the hope that they would not be reached, for the topic has been debated at such length at so many conferences that few delegates would be able to summon up enthusiasm for further battle. Two other themes of some interest were a proposal that local authorities should be required to review their grading schemes every three years and that the conference agenda should in future be so arranged that only matters of major principle should be debated.

At the end of the proceedings the president inducted his successor, Mr. Watson Strother, as president for the ensuing year. Mr. Strother is borough engineer and surveyor at Bethnal Green. He has been a member of N.A.L.G.O. since he entered local government in 1924 and has held important offices in the association's committees.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 56.

A LODGING HOUSE KEEPER'S LAPSE

A sixty year old widow who kept lodgings appeared at Swansea Magistrates' Court on May 7 last, charged first with failing to require six aliens, who were then staying at her premises, to sign a statement and furnish particulars required from them under art. 7 of the Aliens Order, 1920, contrary to the provisions of that article, and secondly, with failing to ascertain and enter in the register kept for the purpose, particulars of all persons staying there, irrespective of nationality, contrary to art. 7 of the Order.

The defendant, who pleaded guilty to both charges, was granted a conditional discharge upon payment of 8*s.* costs, and a third charge, also alleging an infringement of art. 7 of the Order, to which the defendant pleaded not guilty, was not proceeded with.

COMMENT

Article 7 of the Order of 1920 contains provisions to be complied with both by aliens of sixteen years of age and upwards, and by keepers of premises to which the article applies. Premises in question are those, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for reward, and para. 4 of the art. provides that the expression "stay," where used in the article means lodging for one night or more in the premises.

The article directs aliens of sixteen years of age and over to complete a form giving certain particulars, and such forms are to be kept by the lodging house keeper who, in addition, is put under the obligation to keep a register relating to all persons, irrespective of their nationality, of the age of sixteen years or over, who stay at the premises. Paragraph 3 of the article directs the keeper of the premises to retain all statements furnished by aliens and the register for a period of twelve months after the statement was completed or the last entry in the register made. R.L.H.

No. 57.

THE IMPROPER ACQUISITION OF RATIONED FEEDING STUFFS

A works manager appeared recently at Brierley Hill Magistrates' Court to answer a charge of obtaining rationed feeding stuffs except under and in accordance with the provisions of the Feeding Stuffs (Rationing) Order, 1949, contrary to art. 2 (1) of the Order.

For the prosecution, it was stated that the defendant kept poultry at a Bobbington cottage, and when food inspectors visited the cottage they found one ton of rationed feeding stuffs in bags. In a statement, defendant had said that the feeding stuffs were obtained from a farmer and that they had cost him £20 in cash. He did not surrender any coupons.

Defendant told the magistrates that he had got the feeding stuffs from the farmer without realising that he was committing an offence as he knew that farmers had a surplus to dispose of.

Defendant was fined £30 and ordered to pay £3 3*s.* costs.

COMMENT

The Feeding Stuffs (Rationing) Order, 1949, which prohibits in art. 2 (1) the obtaining of rationed feeding stuffs, except in accordance with the provisions of the Order, contains detailed provisions as to the manner in which consumers, retailers, distributing dealers and wholesale dealers are to conduct their business in rationed feeding stuffs and art. 25 of the Order provides that infringements of the Order are offences against the Defence (General) Regulations, 1939.

(The writer is indebted to Mr. G. M. King, clerk to the Magistrates sitting at Brierley Hill, for information in regard to this case).

R.L.H.

No. 58.

A WATCH MAKER DEALT IN SMUGGLED WATCHES

A sixty-two year old watch maker carrying on business at West Bromwich and his wife, appeared at the local magistrates' court recently, charged with being knowingly concerned in dealing with uncustomed goods, *viz.*: three Swiss watches contrary to s. 186 of the Customs Consolidation Act, 1876.

For the prosecution, it was stated that in November, 1950, many watch traders were visited by officers of Customs and Excise to check up the kind of stock that they held. The reason for this was that many smuggled watches had been coming into the country and although a large number of them had been found at the ports of entry, some had got through. The only way to trace them was to visit people who bought watches and to find out how many in their possession were properly imported under a Board of Trade invoice.

The Customs Officer had called at the defendants' shop and the male defendant had produced invoices for all watches in his possession except twelve, which were seized.

In February of this year, another Customs Officer looked in the shop window and saw five watches which he thought were of the type frequently smuggled into the country. He entered the shop and told the female defendant, who said that her husband was out, that he was interested in the five watches and that he would arrange to call back later. The officer passed the shop later in the evening and noticed that the five watches had disappeared from the window and he pointed out this to the female defendant who said " Yes, I have sold two of them." The officer went to the window and pointed out the position which had been occupied by the five watches but the female defendant then denied that any had been moved except those sold.

The male defendant later entered, but could find no invoices relating to the watches which had been in the window and when the officer remarked upon the foolishness of hiding watches the male defendant said that he would talk it over with his wife, and asked the officer to call again.

The next morning, when the officer called, the male defendant produced the three watches and said: " My wife has been ill all night over this. She hid them in her handbag. They were watches which were left over from the time the other man visited the shop in 1950. We did not find them until after he had gone."

For the defendants, who pleaded guilty, it was urged that they had been deceived by the man from whom they had bought the watches in the first place. A number of unscrupulous people had been going round the trade producing trays of watches which were often in short supply and persuading retailers to buy. The defendants recognized that they should have handed the three watches over when they discovered them, but as they had suffered considerable loss in having twelve watches confiscated in 1950, they thought they could mitigate their loss by selling the three. Defendants had not tried to sell them in an underhand manner, but had displayed them prominently in the window.

The Chairman, in fining each defendant £25 and ordering payment of £5 5*s.* costs, said that the bench was unanimous that there were mitigating factors in the case.

COMMENT

The fact that the Bench considered there were mitigating factors in this case is clearly shown by the modest penalty imposed, for it will be recalled that the law has been greatly strengthened in recent years to enable cases of this nature, which have become all to prevalent, to be punished adequately when detected.

As a result of modern legislation, the penalty of treble the value of the goods and duty or £100 provided by the Act of 1876 has been increased to two years' imprisonment in addition to the penalty. It must be borne in mind, however, that s. 12 of the Finance Act, 1943, enacts that, where in addition to a term of imprisonment, a defaulter is ordered to pay a money penalty and in default of payment further imprisonment is ordered, the aggregate of the terms for which the defendant is ordered to be imprisoned shall not exceed two years.

(The writer is indebted to Mr. Bernard Smith, clerk to the West Bromwich Justices, for information in regard to this case).

R.L.H.

PENALTIES

Bristol—May, 1952—stealing 5 *cwt.* of coke—two months' imprisonment. Defendant, a lorry driver employed by a Gas Board, stole coke which he was supposed to deliver to customers. He had five previous convictions.

West Bromwich—May, 1952—(1) slaughtering two pigs without permission, (2) being in possession of 263 *lbs.* of pork otherwise than in accordance with Ministry of Food Regulations—fined a total of £64.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, June 17

FAMILY ALLOWANCES AND NATIONAL INSURANCE BILL, read 3a.

Wednesday, June 18

MAGISTRATES' COURTS BILL, read 2a.

HOUSE OF COMMONS

Monday, June 16

MARINE AND AVIATION INSURANCE (WAR RISKS) BILL, read 2a.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MAGISTRATES' COURTS BILL

In the House of Lords, the Lord Chancellor formally moved the Second Reading of the Magistrates' Courts Bill.

Lord Merthyr welcomed the Bill " on behalf of all those who practice in the courts, and of magistrates and their clerks." He said it would be a great help and a great relief to all those people to have an Act of Parliament of that kind to assist them. Up to now they had had to depend too much on a series of Acts dating back for more than a century. The Bill was the product of most valuable work undertaken by a Committee presided over by Lord Llewellin, whom he thanked.

He went on to say that he saw in the Bill no reference to the procedure under the Justices of the Peace Act, 1360, which enabled a man to be ordered to find sureties for his good behaviour, even though he had committed no offence. That Act was still sometimes used and was of no small value upon occasion. He was curious to know why there was no reference to that procedure in the Bill.

He also noticed that in the Repeal Schedule large sections of well-known Acts were repealed, but other sections remained. Were other Consolidation Bills in contemplation to clean up the remaining parts of some of those Acts? It might be, for instance, that there was to be a Bill to consolidate other branches of the law relating to indictable offences.

Lord Llewellin said that his Committee were consolidating only such parts of the Statute Law as concerned the procedure in magistrates' courts. For that reason, they had to leave out of the Repeal Schedule anything appertaining to courts of assize, quarter sessions or courts which tried indictable offences of that kind. That was why some parts of those Statutes were left and other parts repealed.

The Lord Chancellor said that the Statute Law Revision Committee had a long programme, and he had no doubt that in due course other parts of the criminal law would be consolidated. He could not say now exactly what dates were in the programme.

CRUELTY TO ANIMALS

On the Adjournment in the Commons, Mr. Donald Chapman (Northfield) called attention to what he described as " a minor crime wave in respect of cruelty to animals."

He said that the number of complaints received and acted upon by the R.S.P.C.A. was 17,000 in 1945 and 31,000 in 1951. Actual convictions in the courts numbered 638 in 1945 and 939 in 1951, a 50 *per cent.* increase. If the figures rose during the rest of 1952 as they had done in the first four months, they would reach 11,000. In other words, in 1952, the number of convictions for actual cruelty would, more or less, have doubled compared with 1945.

Every year from 25 to 33 *per cent.* of the convictions were for cruelty to dogs. What was really needed was some enforcement of the 1933 Protection of Dogs Act, and he thought the Home Secretary should draw the attention of magistrates to their powers under that Act. The Act allowed magistrates to forbid a person convicted of cruelty to a dog from owning a dog either for a period of years or for life. That was certainly needed, because it was not unknown for some of the worst offenders to commit those offences time and time again. They should be prevented from owning animals.

A register should be compiled of people who were prohibited from owning dogs. As far as he could make out, if he was prohibited from owning a dog for ten years by the local magistrate, there was nothing to prevent him from moving to another part of the country and purchasing a dog. It was nobody's job to check up whether, in fact, he did own a dog within the period for which he had been prohibited.

He went on to say that there must be some pressure on magistrates to increase the penalties. It was very often cheaper to be cruel now than it was pre-war. Fines of 10*s.* were still being imposed for offences for which 10*s.* fines were imposed before the war.

The Joint Under-Secretary of State for the Home Department, Sir Hugh Lucas-Tooth, replying, said there was really no indication of any substantial increase in that kind of crime or any increase in the degree of cruelty involved. His statistics showed that in the 1920's, on an average, some 6,000 prosecutions for cruelty to animals took place annually. In the following decade, the average had dropped to 3,000 a year. During the war there was a sharp drop, and in 1945 the number was only 900. By 1948 the figure had dropped to 846 and in 1951 it had risen again to 1,021.

He suggested that one reason for the large number of complaints to the R.S.P.C.A. was the livelier interest on the part of the public, which was a good thing.

Sir Hugh was still speaking when the debate lapsed under the Rules of the House.

REVIEWS

Key to Income Tax and Surtax. London : Taxation Publishing Company, Ltd. Price 7s. 6d. net.

At 115 J.P.N. 700 we called attention to an earlier edition of this handbook which appeared in the latter part of 1951, and took account of changes effected by last year's Finance Act. The edition now before us was produced in connexion with the Chancellor's budget statement of 1952, and actually before the Finance Act, 1952, had passed into law. It may thus be necessary to check particular pages by reference to the fate in Parliament of the Chancellor's proposals. Even so, the work will be useful in daily practice, because it embodies the Income Tax Act, 1952, and shows in relation to it what will be the effect of this year's budget proposals. As contrasted with textbooks and handbooks in the normal form, it is prepared on the thumb index principle, there being an index by subject on the right hand margin and another, according to the method of arrangement, on the margin at the bottom. This enables the practitioner to find quickly what he wants about every separate topic, and will make the *Key* worth possessing for use in conjunction with more orthodox works, such as *Simon's Income Tax* and the new *Handbook to the Act of* 1952 published in connexion with *Simon's Income Tax*.

Local Government Elections: Supplement and Noter Up. By A. N. Schofield. London : Shaw & Sons, Ltd. Price 25s. net.

At 114 J.P.N. 389 we reviewed the second edition of Mr. Schofield's *Local Government Elections* which had already, in its first edition, established itself as a valuable work for returning officers and others concerned with those elections. Apart from what seemed to us ground for complaint regarding the index, we foresaw that it would be useful to have at hand, and we have found it so in practice. The second edition had been made necessary by the Representation of the People Act, 1949, consolidating a great deal of the election law and (unfortunately from some points of view) the law as then consolidated has been further altered by the Elections Commissioners Act, 1949, and the Representation of the People (Adaptation of Enactments) Order, 1951. More important, from the point of view of finding quickly whatever provision is required, the election rules for each class of local authority have also been revised and re-enacted. This means that the second edition of the main work, new though it is, has to some extent been put out of date. Hence the need for the learned author and the publishers to produce the present *Supplement*. Out of nearly three hundred pages, it is a measure of the extent to which Parliament and the Home Secretary have upset the law as it stood in 1949, even in the short period which has elapsed, that some two hundred pages comprise simply the statutes and statutory instruments. Whether the size of the book is justified, seeing that so much of it is available in official publications, is a question of opinion, but for users of the main work, which means for a large number of our readers, it will be valuable to have this *Supplement* at hand. The *Supplement* is well printed and, although space is not wasted, everything included in it can be clearly seen and readily picked up.

PUBLICANS AND SINNERS

The law relating to Income Tax has long been a field of conflict between the inventiveness of the Inland Revenue and the ingenuity of the legal practitioner. The draftsmen of successive Finance Acts have made a habit of stopping up, with inexorable persistence, the loopholes which the cunning of the private lawyers has succeeded in uncovering in the structure of the fiscal code : few complain of this—least of all the legal experts, who are put upon their mettle by the odds against them. Both sides usually play the game according to the rules, though there were accusations of bad sportsmanship two years ago, when the Revenue Authorities stole a good many runs by means of an unfair piece of retrospective legislation.

The Englishman always attaches great—some think undue—importance to matters of terminology, and while " tax avoidance " has been granted the tolerant acquiescence of the highest court in the land, both on legal and on moral grounds, " tax evasion " (whether by lawful or unlawful means) has met with judicial disfavour. A logical Frenchman might well regard it as fortunate that the English language is so rich in its vocabulary as to permit of these subtle distinctions. But there the distinction is, as found by eminent judges ; among laymen the border-line is not so well defined, and in their wholesome dislike of badgering and bullying by government departments they are perhaps inclined to regard nearly all methods of escape from the fiscal net with envious admiration, if not applause. Many contraventions of the Revenue Laws are generally accepted as venial offences, and this is by no means a new attitude among a public which, in other matters, is fairly law-abiding. In the 1880's, when the rate of tax varied between 6*d.* and 8*d.* in the £, W. S. Gilbert could raise a laugh in *Ruddigore* by the spectacle of Sir Ruthven Murgatroyd, Bart., confronted by the ghosts of his evil ancestors who demand to know in what crimes he is indulging for the due performances of his duties as the latest scion of a line of Bold, Bad Baronets :

Sir Ruthven : On Tuesday I made a false Income-Tax return.
All : Ha ! Ha !
1*st Ghost* : That's nothing !
2*nd Ghost* : Nothing at all.
3*rd Ghost* : Everybody does that !
4*th Ghost* : It's expected of you.

There is, of course, honour even among thieves, and the income-tax evaders have usually been content with modest nibbles around the edge of the Tax Collector's cake ; few are so bad or so bold as to attempt to gulp it down in one mouthful. Those whose greed gets the better of their discretion usually find, in the end, that the meal is too much for their digestion. When milder medicines fail, and they find it necessary to resort to the drastic remedy of forgery, they are apt to come to a sticky end.

Two such *gourmands* have recently been sentenced to lengthy terms of imprisonment by the Central Criminal Court. Their particular form of misdirected ingenuity was applied in calculating how many children they would need in order that their allowances might carry them to total exemption. Perhaps they had read Voltaire in their youth and, adapting his famous aphorism, observed that if their children did not exist it would be necessary to invent them. When their claims for relief on the basis of a sufficient number of fictitious offspring were queried, they attempted to " add artistic verisimilitude to a bald and unconvincing narrative " by producing forged baptismal certificates in support of their claims. The loss to the Revenue—£329 in the one case and only £7 in the other—was vindicated by sentences of four and two years respectively.

The ordinary, discreet tax-evader will probably agree that such a game is not worth the candle. Forgery is as much outside his ken as violent crime, and scarely worth the risk—unless (as in the case of the recent mail-bag robbery) the value of the prize runs into at least six figures. Unfair practices of this kind are to be strongly deprecated as making things unnecessarily difficult for everyday delinquents of more modest ambitions. The inevitable result will be to transfer to the shoulders of other practitioners, in a big way, of the art of evasion some of the opprobrium which, since Roman times, has been vented upon the *publicanus* or tax-gather, official or unofficial.

It cannot be gainsaid that there is some basis of moral justification for the general animus against those industrious public servants who take and spend so large a proportion of our resources in return for the luxury of bad government. A professional or business man who so conducts his affairs, or the affairs of a company of which he is a director, as to bring himself to the verge of bankruptcy or to cause his shareholders heavy loss, is held up to public contempt, and will be fortunate if he escapes with a searching examination before the Registrar in Carey Street. In extreme cases he may even find himself in the dock at the Old Bailey or the Assizes. How different is the fate of the politician who, by inefficiency and extravagance in the

conduct of his ministerial department at home, or by the tactlessness and ineptitude of the foreign or colonial policy which, as a member of the Cabinet, he takes part in formulating, renders it impossible to trim the Budget sails to the winds of adversity, and allows the ship of state to drift into the vortex of financial stringency, trade depression and inflation ! At the worst he will fail to retain his seat at the next Election, retire on pension to his country-house and set up as a writer of authority on economic affairs ; at the best he willl be granted a peerage and thenceforward, deprived of the opportunity of intervening on fiscal questions in public debate, will transfer his attentions to and confer the doubtful benefit of his activities upon the board of some commercial concern. His former slaves and minions, the officials of the Inland Revenue, who have aided and abetted him in his nefarious raids upon the taxpayer's purse, cannot avail themselves of the defence which is open to every soldier—obedience to the orders of a superior which are not *manifestly* unlawful—and will thus draw upon their devoted, inarticulate heads the hatred and contempt which their erstwhile chief, the real architect of industrial and financial chaos, has deservedly earned.

Another reason for the unpopularity of the tax-gatherer arises from the Englishman's preference for keeping himself to himself, and his instinct for privacy in his personal affairs. Inquisitiveness as to his earnings and standard of life he regards as an outrage on decency ; he would no more think of voluntarily disclosing the details of his income than of taking off all his clothes in a public street. It is not surprising, then, that he regards Inspectors and Collectors of Taxes as interfering busybodies and strongly resents their activities. Gilbert again strikes the national note in the plaintive song of King Gama in *Princess Ida* :

> " I know everybody's income and what everybody earns,
> And I carefully compare it with the income-tax returns :
> But to benefit humanity however much I plan,
> Yet everybody says I'm such a disagreeable man !
> And I can't think why ! "

There is found in English history a long tradition of sturdy resistance to fiscal tyranny of all kinds. The institution of a poll-tax was the last straw added to the burden of the poor that started the Peasant Revolt of 1381 ; the Crown's attempt to levy taxation without the consent of Parliament was one of the root-causes of the Civil War in 1642, and the War of Independence began in 1775 with resistance to the methods employed by the Government of George III in extorting revenue from the American Colonies. Though Land Tax dates back to 1692, the income-tax proper was first instituted by Pitt in 1799 to help to defray the cost of the Napoleonic Wars. It has always been unpopular, and rumbles of discontent were heard even when, in the halcyon days of 1874 and 1875, it was only 2*d.* in the £. What our full-blooded ancestors would have said to the rate of the present levy, and what the Hampdens, the Pyms and the Washingtons would have done about it, is an interesting speculation.

There is no historical evidence that the present methods were adopted in Shakespeare's day, but many a harassed citizen, on opening the imposing-looking " O.H.M.S." envelope on his breakfast table, will at this season of the year echo with sympathy the outburst (in another connexion) of the Prince of Arragon in *The Merchant of Venice*, who received an equally nasty surprise on unsealing Portia's silver casket :

> " What's here ?
> The portrait of a blinking idiot
> Presenting me a Schedule ! "

The only difference is that, mercifully, H.M. Inspector of Taxes does refrain from enclosing his photograph with the terse communications he indites. A.L.P.

NEW COMMISSIONS

ABINGDON BOROUGH

Lewis John Boulton, Norman House, Abingdon.
John Gilroy Carter, 151, Sutton Road, Drayton, Berks.
Mrs. Elsie May Mullard, 21, St. Helen's Estate, Abingdon.
Dr. Joan Gladys Harcourt Norris, 14, Norman Avenue, Abingdon.
Henry Arthur Olliffe, 205, Saxton Road, Abingdon.
Reginald Alexander Trotman, 6, Ock Street, Abingdon.

BURTON-ON-TRENT BOROUGH

Thomas Harper Bayliffe, 337, Shobnall Street, Burton-on-Trent.
William Omer Burnell, 205, Derby Road, Burton-on-Trent.
Mrs. Ada Chadwick, 8, Foston Avenue, Burton-on-Trent.
Frank Lawson John Jackson, 1, Hamilton Road, Burton-on-Trent.
George Clifford Keen, Wensley Dale, Station Road, Rolleston-on-Dove, Burton-on-Trent.
Francis Walter Russell, 25, Kitling Greaves Lane, Burton-on-Trent.

LEICESTER BOROUGH

Joseph Geoffrey Hilton, 26, Knighton Grange Road, Leicester.
Bernard Shenton, 10, Winton Avenue, Leicester.
William Thomas Tanser, 17, Kingswood Avenue, Leicester.
Victor Edward Warner, 10, Stoughton Road, Oadby, Leicester.

NEW WINDSOR BOROUGH

Miss Mabel Victoria Cooke, 12, Clarence Road, Windsor.
Richard Henry Tozer, Wellington House, Sheet Street, Windsor.
Mrs. Joyce Ruth Waltham, 122, St. Leonard's Road, Windsor.

STOKE-ON-TRENT BOROUGH

William Anthony Adams, Lea Head Manor, Aston, Market Drayton, Salop.
Miss Florence Ball, 2, Wain Street, Burslem, Stoke-on-Trent.
Gordon Dale, 7, Hillfield Avenue, Trent Vale, Stoke-on-Trent.
Joseph Ellis, 5, Harding Road, Hanley, Stoke-on-Trent.
Ernest James Johnson, Oulton Cross, Stone, Staffs.
Richard Frederick Lindop, 195, Longton Road, Trentham, Stoke-on-Trent.
Thomas Parton, 624, High Lane, Tunstall, Stoke-on-Trent.
Mrs. Annie Allen Plant, 77, Birches Head Road, Hanley, Stoke-on-Trent.
Miss Ophelia Mary Wilkinson, Upwey, Highfield Avenue, Meir.

PRACTICAL POINTS

All questions for consideration should be addressed to " The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Fraudulent conversion—Larceny Act*, 1916, *s.* 20 (1) (iv), (*b*).

X agreed to act as treasurer and to receive small payments from any of the members of a club who wished to join a coach trip. A number of members of the club in question paid X for the cost of their seats in the coach—some by weekly payments and some by paying a lump sum of 30*s*. It was arranged that X would pay the full amount of the cash to the club's treasurer who could then forward a cheque to the coach proprietors for the expense of the trip.

After the trip X paid a proportion of the cash which he had received to the club treasurer but he has failed to hand over the balance of £100 which he received.

I should be obliged if you would inform me whether in your opinion :

1. X should be charged with fraudulent conversion under s. 20 (1) (iv) (*b*), Larceny Act, 1916.

2. If so whether he can be charged with having received a lump sum of £100 or whether having regard to the decision in *R.* v. *Morris* (24 Cr. App. R. 105), he should be charged on separate counts relating to every payment made to him by members of the club.

3. If the answer to 1. is " Yes " did X receive the property on account of the coach proprietor or the club treasurer ;

4. If the answer to 1. is " No " what offence (if any) has X committed?

SALLA.

Answer.

1. In our opinion, this is an appropriate charge.

2. We think the present case is distinguishable from *R.* v. *Morris*, *supra*. In the present case we understand the arrangement was not to make periodical payments to the club treasurer, but to make a lump sum payment in full. If this is so, the mis-appropriation takes place when the payment of the lesser amount is made to the club treasurer, and we think a single charge in respect of the £100 deficiency is correct.

3. The club treasurer, there being no relationship between X and the coach proprietor.

4. Does not arise.

2.—Fines—*Enforcement—Defendant in Scotland—Money Payments (Justices Procedure) Act*, 1935.

A defendant resident in Scotland was convicted by my court, and a fine was imposed. Time was given to pay. The defendant has defaulted in payment of the fine, and the question of enforcement now arises.

I assume that the correct interpretation of s. 16 (4) of the Money Payments (Justices Procedure) Act, 1935, is that, with the exception of s. 11 (2), the Act does not apply to the enforcement of fines imposed by (i) Scottish courts, and (ii) English courts where the defendant is resident in Scotland.

I also assume that the defendant cannot be imprisoned for default without first being brought before the convicting court, which, in fact, means a large expense after his arrest in Scotland.

A defendant resident in Scotland, convicted in England, appears to be a difficult case. He must receive the benefit of the Act so far as his conviction goes, but once he is over the border, the provisions as to transfer and enforcement do not apply.

I should appreciate your views on the above points, and generally on the methods of enforcement of fines where the defendant is resident in Scotland.

SPORE.

Answer.

If the defendant in any case is duly convicted by a court of summary jurisdiction in England, the fact that he is resident in Scotland does not affect the validity of a warrant to secure his attendance before the English Court for the purpose of inquiry as to his means. There cannot, we think, be a transfer of fine order to a Scottish court, and therefore the English court must issue the process. As the conviction was in England, s. 1 of the Act of 1935 applies even though the defendant resides in Scotland, and there must be a means inquiry unless the court has for special reasons imposed the term of imprisonment at the time of conviction.

We agree with our learned correspondent as to the difficulties arising in this class of case.

3.—Highway Act, 1835, s. 67—*Roadside ditch in private ownership—Owner's right to water.*

Owing to flooding, the council desire to lay a drain across a public highway to carry the water from a roadside ditch into a recently laid storm sewer. Below the point at which the drain would connect with the ditch, the landowner, many years ago, diverted the water into an ornamental lake and thence, by overflow, into the ditch again. The ditch where the diversion has taken place is the property of the landowner and does not form part of the highway.

Advice is requested as to :

1. Whether the council could be held liable for damages if the drain is laid in such a manner so as to take the whole of the water in the ditch, thus cutting off the flow into the lake. It is possible to lay the drain to take flood water away, leaving the normal flow unimpeded ;

2. Alternatively, could the council be held liable for cutting off the flow to the lake, if the roadside ditch was cleansed along its whole length under s. 67 of the Highway Act, 1835, having regard to the fact that the roadside ditch is the property of the owner of the lake.

Fog.

Answer.

1. We think that the council could be held liable if the flow into the ornamental lake is cut off by them. Every riparian proprietor is entitled to have the customary flow of the water of a stream on the banks of which his property lies : *Young & Co.* v. *Bankier Distillery Co.*, [1893] A.C. 691. In the same way he has the right to the ordinary use of the water for his reasonable domestic purposes. In this case he returns the water of the ornamental lake to the stream, and does not, it seems, abstract any.

2. In our opinion, yes. Section 67 plainly envisages the liability of the highway authority to pay for any damage sustained by the owner or occupier of adjoining lands. In our view, the stopping of the flow to the lake would constitute damage within the section.

4.—Licensing—*Transfer of licence after renewal but before April 5—Procedure.*

The licensing justices at brewster sessions renewed the licence of a certain house then being vested in A, an official of a brewery company. It being desired that the licence should then be vested in another officer of the company, B, a transfer application was lodged for hearing at the adjourned brewster sessions in March. The clerk to the justices then raised the question as to whether the transfer should extend to both the existing licence, which will expire on April 5, and to the renewal thereof which would subsequently be in force, or only to the existing licence, a subsequent application being made after April 5.

Reference was made to ss. 23 and 41 of the 1910 Act and to the notes thereon appearing in the 1952 edn. of *Paterson*.

It is desired to know whether, at a transfer sessions held in these circumstances, both the current licence and the renewed licence can safely be transferred at the same time, and incidentally as to whether, in such circumstances, two sets of fees would be payable and two transfers would be issued. In actual practice it is understood that many licensing justices in fact transfer both licences when a transfer application is made after the renewal of the licence at brewster sessions and before April 6.

Eventually, as a matter of precaution, the application was postponed to the first transfer sessions to be held after April 5.

NOODS.

Answer.

We agree that the better procedure is to postpone the application for transfer until after April 5.

We reviewed the unsatisfactory state of the law in this connexion n answers to practical points at 114 J.P.N. 453 and 115 J.P.N. 79.

5.—Magistrates—*Jurisdiction and Powers—Offence triable summarily or on indictment—Criminal Justice Act*, 1925, *s.* 11 (1)—*Jurisdiction when it is tried throughout as a summary offence.*

Your opinion is sought on the interpretation of s. 11 (1), Criminal Justice Act, 1925, insofar as it affects an indictable offence intended to be dealt with summarily.

We cite the case of a man who takes a motor car without consent, in borough A and is apprehended by a constable in adjoining borough B, into which he has driven. It is further established that the offence of driving whilst uninsured is also committed by him, proof of which exists only in borough B.

It is desired to deal summarily with both offences together in borough B. In this respect we therefore have (1) the taking without consent offence punishable either summarily or on indictment by s. 28, Road Traffic Act, 1930, and consequently triable in either borough as an indictable offence within the provisions of s. 11 (1), Criminal Justice Act, 1925, and (2) the insurance offence triable summarily only by the justices of borough B under s. 35, Road Traffic Act, 1930.

Some doubt has now arisen as to the precise meaning of the term " examining justices " in the proviso to s. 11 (1), Criminal Justice Act, 1925, referred to. There is a contention that " examining justices," although defined in s. 49 (2) of the same Act, necessarily implies that trial on indictment must follow ; that the powers contained in the

whole of the section are therefore restricted to such cases; that offences to be dealt with summarily are excluded, and are thus triable only in the borough where committed.

Support is lent to this interpretation of the term "examining justices" by the purport of s. 12 of the same Act.

We are aware of the decisions of the Lords Justices of Appeal in November, 1948, and again in the latter part of 1951, to the effect that offences which are by law punishable either summarily or on indictment are indictable offences, and hence our original belief.

It is further mentioned that conditions of hardship, in which context the term "examining justices" might appear to be solely associated, does not arise in our case.

Our question, in short, is "Does an offence of taking a motor car without consent, intended to be dealt with summarily, come within the provisions of s. 11 (1), Criminal Justice Act, 1925, and is such an offence therefore triable either where committed, or where apprehension occurs, in the circumstances outlined?"

J. S. HEADBOROUGH.

Answer.

We think that if the case is dealt with throughout as a summary one it must be tried in borough A. It can be argued, however, that as there is jurisdiction to deal with it as an indictable offence in borough B it can be started there as an indictable case, and that there is nothing to prevent the court in borough B from proceeding thereafter, under s. 28 (2) of the Criminal Justice Act, 1948, to try the case summarily. We believe that this course has in fact been taken from time to time.

6.—Malicious Damage—*Shrubs on housing estate.*

I was interested in the reference to s. 14 of the Criminal Justice Administration Act, 1914, in your article "Kindness to Flora" at 116 J.P. 53, and would appreciate your opinion as to whether a prosecution under that section would be appropriate against a person who wilfully did break a flowering tree planted in a grass verge between the footpath and carriageway of a street constructed on a local authority housing estate under the provisions of s. 79 (1) (*a*) of the Housing Act, 1936.

BUD.

Answer.

We think the section is appropriate.

7.—Rivers Pollution—*Natural stream in artificial channel—Sewer serving temporary housing accommodation.*

Farmer Brown's land adjoins a disused airfield. A ditch, in which there is always a flow of water, runs along Farmer Brown's boundary, thence through a pipe under the airfield, and discharges into a natural stream. Until the airfield was constructed under emergency powers, the ditch was an open one in its entire length.

For temporary housing purposes, huts on the disused airfield have been made habitable by the Blankby R.D.C., and washing-up water and surface water is led from the huts and discharges into Farmer Brown's open ditch. The pipe under the airfield, which should lead the contents of the ditch to the natural stream, has now become blocked. Brown's land in consequence is becoming waterlogged or flooded with dirty water. The real cause of the blockage is a matter purely of evidence, but we should welcome your views on the following points:

1. Is an artificially constructed ditch, which at all times has a flow of water passing through, a "watercourse" within the meaning of the Rivers Pollution Prevention Acts, or of the Rivers (Prevention of Pollution) Act, 1951?

2. Is the drain leading from the huts to the ditch a sewer within the meaning of the Public Health Act, 1936? If so, at what point does it cease to be a sewer—(*a*) at the outfall into Farmer Brown's ditch, or (*b*) at the outfall into the natural stream beyond the airfield?

"B. COLL."

Answer.

1. Yes.

2. We think so; that is, we should not regard the huts (which we imagine are now occupied by separate families) as within one curtilage—*see Lumley's* note, 11th edn., p. 694. We think the sewer ends where it reaches the pre-existing ditch in which natural water flows.

8.—Road Traffic Acts—*Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1933—Failure to pay fare—Regulation 11 (b) (i)—Need for an individual demand to each passenger?*

It is very difficult to decide whether a conductor's general request for "fares please" constitutes "a demand" for the purposes of these regulations. The relevant paragraphs of the regulations state that:

"11 (*b*) (i) Every passenger on a stage or express shall unless he is the holder of a ticket in respect of that journey, immediately upon demand, declare the journey he intends to take or has taken and pay the conductor the fare for the whole of such journey and accept the ticket provided therefor.

"(*c*) No passenger shall leave or attempt to leave the vehicle without paying the fare for the journey he has taken, and with intent to avoid payment therefor."

You will recall that in *L.P.T.B.* v. *Sumner* (1935, W.N. 196) the High Court held that a tramway byelaw which made the omission to pay a legally demandable fare an offence, was *ultra vires*. This decision resulted in the amendment of the regulations by the inclusion of para. (*c*) above. It is interesting to note that the prosecution was brought under this byelaw and not under cl. 11 (*b*) (i) of the regulations, perhaps because there was only a general request by the conductor. It seems therefor that "a demand" for fares, the non-payment of which may lead to prosecution, has to be a specific demand to the individual passenger. This is also borne out by the fact that declaration of journey must be made immediately after the demand (11 (*b*) (i)) and this can hardly be enforced after a general request.

Your attention is also drawn to the footnote on p. 345 of *The Law of Inland Transport* (by O. Kahn-Freund) which reads:

"The conductor's exclamation "any more fares, please," has now become an act of the greatest legal relevance, since it is a demand for the fare, the non-compliance with which is a criminal offence." No authority, however, is quoted to support the statement.

Would you be good enough to give your opinion as to the following questions:

Is a general request for "fares please" by a conductor sufficient to found a prosecution under reg. 11 (*b*) (i) if a passenger makes no effort to pay his fare?

If so, would evidence such as the payment of fares by other passengers sitting round the defendant be required?

JEX.

Answer.

There are so many possible variations of circumstances that can arise in this connexion that we think it impossible, in the absence of direct authority, to say what constitutes a demand for a fare without reference to the particular facts of the case in which the question arises. The onus of proving the demand is always on the prosecution. It seems to us, to take one instance, that a general demand for "fares please" which leads to a number of people close to and around the defendant paying their fares would establish a *prima facie* case, and would put upon him the onus of showing that for some reason he did not hear the demand or did not appreciate that it related to him.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

COUNTY OF CARMARTHEN

Appointments of Clerk of the County Council and Clerk of the Peace

THE Carmarthenshire County Council invite applications from Solicitors with considerable local government experience for the office of Clerk of the County Council.

The annual salary will be £2,700, rising by two annual increments of £100 each and one of £50 to a maximum of £2,950.

The Officer appointed will not be allowed to engage in private practice or, except as hereinafter provided, to hold any other public office, and will not be permitted to have any connexion directly or indirectly, financially or otherwise, with any legal firm or business whatsoever.

All fees, costs and other remuneration of whatsoever description received by the Clerk in all his offices, excluding remuneration as Acting Returning Officer in Parliamentary Elections, shall be paid into the County Fund.

The appointment will comprise such offices as are and may be required by law or by the direction of the County Council to be executed by the Clerk and includes the duties of Clerk of all Committees (with exception of Clerk to the Education Committee), Returning Officer for County Council elections and all conveyancing, litigious and Parliamentary business.

Ability to speak Welsh is most desirable.

In the event of the successful candidate being subsequently offered by the Court of Quarter Sessions and accepting the office of Clerk of the Peace, an additional salary of £400 per annum will be paid. All fees and other remuneration received by the Clerk of the Peace shall be paid into the County Fund.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and may be terminated by three calendar months' notice in writing on either side at any time.

Applications (endorsed "Clerkship") stating age, legal and academic qualifications, experience, past and present appointments, etc., with the names of three referees, must be delivered to the Chairman of the Carmarthenshire County Council, at the address shown below not later than noon on Tuesday, July 15, 1952.

W. S. THOMAS,
Acting Clerk of the County Council.

County Hall,
Carmarthen.
June 21, 1952.

HERTFORDSHIRE COUNTY COUNCIL

Senior Assistant Solicitor

APPLICATIONS invited for an appointment on the staff of the Clerk of the County Council on Grade X.

The post involves responsibility for the work of the office in connexion with certain Committees and general duties as required. Local Government experience essential, experience in advocacy desirable.

Applications to the Clerk of the County Council, County Hall, Hertford, by July 12, 1952. No testimonials are required, but the names of three referees must be given.

NEVILLE MOON.
Clerk of the County Council.

WEST RIDING OF YORKSHIRE COMBINED AREA PROBATION COMMITTEE

Appointment of a Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment.

The officer would be centred at Barnsley and assigned to the Petty Sessional Divisions of Barnsley County Borough and Staincross.

Applicants must be not less than twenty-three nor more than forty years of age except in the case of whole-time serving officers and persons who have satisfactorily completed a course of training approved by the Secretary of State.

The appointment will be subject to the Probation Rules, 1949 to 1952, and to the Local Government Superannuation Act, 1937, as amended by the West Riding County Council (General Powers) Act, 1948.

The successful candidate will be required to pass a medical examination.

Application forms may be obtained from the Principal Probation Officer, West Riding Court House, Wakefield.

Applications, together with two recent testimonials, should be enclosed in a sealed envelope marked "Appointment of Probation Officer," and must reach the undersigned not later than July 19, 1952.

BERNARD KENYON,
Clerk to the Combined Area Probation Committee.

Office of the Clerk of the Peace,
County Hall,
Wakefield.
June, 1952.

CITY OF LEEDS

Appointment of Additional Male Probation Officer
Appointment of Female Probation Officer

APPLICATIONS are invited for the above full-time appointments.

Applicants must not be less than twenty-three nor more than forty years of age except in the case of a serving full-time Probation Officer. The appointment will be subject to the Probation Rules, 1949 and 1950, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications, stating age and qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than Saturday, July 12, 1952.

T. C. FEAKES,
Secretary to the Probation Committee.

The Town Hall,
Leeds, 1.

BOROUGH OF CHATHAM

Appointment of Deputy Town Clerk

APPLICATIONS are invited from solicitors with local government experience. Salary £760×£25×£860 per annum. Full-time superannuable post. Full details from the undersigned. Applications must include the names of three referees. Closing date July 11, 1952. Canvassing will disqualify. Housing accommodation available.

ROWLAND NEWNES,
Town Clerk.

Town Hall,
Chatham, Kent.
June 23, 1952.

BOROUGH OF SCARBOROUGH

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor. Salary in accordance with A.P.T. Grades Va (£600—£660) — VII (£685—£760) according to experience.

The appointment is subject to the Local Government Superannuation Act, 1937, and to medical examination, and terminable by one month's notice.

Applications to be sent to the undersigned, with copies of two recent testimonials and endorsed "Assistant Solicitor," on or before Friday, July 11, 1952.

E. HORSFALL FURNER,
Town Clerk.

Town Hall,
Scarborough.
June 20, 1952.

EASTERN ELECTRICITY BOARD

Appointment of Senior Legal Assistant

APPLICATIONS are invited from Solicitors for the appointment of a Senior Legal Assistant for general legal work, in the department of the Secretary and Solicitor to the Board.

The salary will be fixed within the range £1,125 p.a. to £1,300 p.a., and future salary and conditions of service will be in accordance with agreements made from time to time by the appropriate negotiating bodies.

The successful candidate will be required to contribute to a superannuation scheme and may be required to undergo a medical examination.

Applications, to arrive by July 10, 1952, should be made by letter, giving full particulars of qualifications and experience, to the Secretary, Eastern Electricity Board, Wherstead, Ipswich, Suffolk.

June 18, 1952.

CITY OF LANCASTER

Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of a whole-time assistant to the Clerk to the Justices. Applicants must have had considerable Magisterial experience, be competent shorthand typists, capable of issuing process, keeping the accounts and taking occasional courts. Salary £450—£550 according to qualifications and experience. Applications to be accompanied by a copy of three recent testimonials. George F. Hallam, Clerk to the Justices, 21 Sun Street, Lancaster.

ROAD SIGNALS AT TOWER BRIDGE

Road signals have recently been installed at the approaches to Tower Bridge and provide a clear and unmistakable indication of conditions to traffic when the bridge is either open or closed. Control of the signals at both approaches is from either the east or west cabin located at the north end of the bridge. Alternatively either approach may be independently signalled. Supervision of the signals is provided by means of indicator lamps on the control desks.

The equipment was designed and manufactured by Automatic Telephone & Electric Co. Ltd. to the requirements of the City of London Corporation.

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